Mr Justice Miller

SUPREME COURT OF THE UNITED STATES.

No. ~~248.~~ 127.

THE BRIG KATE, HER TACKLE, &c., AND LADING, CHARLES P. LAKE, CLAIMANT AND APP'T,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

I Affirm —
Affirmed C I

SUPREME COURT OF THE UNITED STATES.

No. 248.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

[SEAL.] In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 7 day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the fourth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK KATE, her tackle, &c., and lading. } Vol. 16, page 161.

Oct. 1st, 1860.—The libellants file their libel in the words and figures following, to wit:

3 *To the honorable Samuel R. Betts, judge of the district court of the United States of America for the southern district of New York:*

The libel of information of James J. Roosevelt, attorney of the United States for the said southern district of New York, who prosecutes for the said United States in this behalf, and being present here in court, in his own proper person, in the name and on behalf of the said United States, against the bark Kate, her tackle, apparel, and furniture, and lading, in a case of seizure and forfeiture, alleges as follows:

First. That a certain citizen or certain citizens of the United States, or a certain foreigner or some other person coming into or residing within the same, whose name or names are as yet to the said attorney unknown, did, for himself or for themselves, or for some other person or persons, whose name or names are as yet to the said attorney unknown, either as master, factor, or owner, heretofore, to wit, on the day of , in the year eighteen hundred and sixty, fit, equip, load, and otherwise prepare the aforesaid vessel,

being a bark called Kate, within a port or place of the said
4 United States, to wit, the port of New York, for the purpose of carrying on a trade in slaves to some foreign country to the said attorney as yet unknown, or for the purpose of procuring from some foreign kingdom, place, or country, to the said attorney as yet also unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, port, or place, to the said attorney as yet also unknown, to be sold and disposed of as slaves, contrary to the first section of the act of Congress approved the twenty-second day of March, in the year seventeen hundred and ninety-four, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Second. That after the passing the act of Congress approved April 20, 1818, entitled "An act in addition to the act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight," and to repeal certain parts of the same, to wit, on the day of , in the year eighteen hundred and sixty, some citizen or citizens of the United States, or some other person or persons whose name or names are as yet to the said attorney also un-
5 known, did, for himself or for themselves, or for some other person or persons, whose names or names are as yet to the said attorney also unknown, either as master, factor, or owner, fit, equip, load, and otherwise prepare the said vessel, being the bark called Kate, in a port or place within the jurisdiction of the United States, to wit, the port of New York, in the southern district of New York, and within the jurisdiction of this court, for the purpose of procuring certain negroes, mulattoes, and persons of color, from some foreign kingdom, place, or country, to the attorney aforesaid unknown, to be transported to some port or place to the said attorney also unknown, to be held, sold, and otherwise disposed of as slaves, and to be held to service and labor, contrary to the second section of the last-mentioned act of Congress.

Third. That the said vessel, being the bark Kate, is now lying in the port of New York, in the district aforesaid, having on board of her her aforesaid lading, consisting of certain merchandise, provisions, and other articles, and of which a schedule, marked A, is hereto annexed, and to which schedule reference is hereby made as part of this libel. (Schedule A.)

6 That by reason of the premises and virtue of the said act, the said bark Kate, her tackle, apparel, and furniture, and lading, became forfeited.

That all and singular the premises aforesaid are and were true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Therefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said bark Kate, and her tackle, apparel, and

furniture, and lading, in this behalf to be made; and that all persons interested in the said bark Kate, and her tackle, apparel, and furniture, and lading, may be cited to answer the premises; and that all due proceedings being had thereon, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said bark Kate, her tackle, apparel, and furniture, and lading, may be condemned for the use of the United States, according to the said acts of Congress, &c.

JAMES J. ROOSEVELT,
U. S. Attorney.

7 16, 161. U. S. dist. court. The United States *vs.* The Bark Kate, her tackle, &c., and lading. Libel. James J. Roosevelt, U. S. dist. att'y. Filed Oct. 1, 1860.

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

[SEAL.] Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the first day of October, in the year of our Lord one thousand eight hundred and sixty, by James J. Roosevelt, esquire, U. S. district attorney, on behalf of the United States of America, against the barque Kate, her tackle, &c., and lading, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said barque, her tackle, &c., may, for the causes in the said libel mentioned, be condemned as forfeited to the use of the United States:

You are, therefore, hereby commanded to attach the said barque, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the twenty-third day of October next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this first day of October, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth.

JAS. J. ROOSEVELT,
U. S. District Attorney.
GEO. F. BETTS, *Clerk.*

9 In obedience to the within monition, I attached the bark Kate, her tackle, &c., and lading, therein described, on the 1st day of October, and have given due notice to all persons claiming the same, that this court will, on the 23d day of October, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ISAIAH RYNDERS,
U. S. Marshal.

Dated Oct. 23d, 1860.

Vol. 16, page 161. Southern district of New York, United States district court. The United States *vs.* The Bark Kate, her tackle, &c., and lading. Monition ret'ble, 23d Oct., 1860. Jas. J. Roosevelt, U. S. attorney. Filed the 23d day of Oct., 1860.

10 U. S. district court.

THE BARK KATE, her tackle, &c., *ads.* THE UNITED STATES.

SIR: Please to take notice that an application will be made to this honorable court on the 3d instant, on the opening of the court on that day, or as soon thereafter as counsel can be heard, that appraisers be appointed to appraise the value of the above-named vessel and lading, and that upon giving stipulations for value and costs they be delivered up to the claimants.

Dated October 2d, 1860. Yours, &c.,
BEEBE, DEAN & DONOHUE,
Proctors for Cl't.

To Hon. JAS. J. ROOSEVELT, *U. S. Att'y.*

Endorsed: 16, 161. U. S. district court. The Bark Kate, her tackle, &c., and lading, *ads.* The United States. Notice for the appointment of appraisers. Beebe, Dean and Donohue, proctors for cl'm't. Filed Oct. 3d, 1860.

11 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Wednesday, the 3d day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, her tackle, &c., and lading, *asm.* THE UNITED STATES.

On reading and filing notice of motion for appointment of appraisers, ordered that the said vessel and her cargo be appraised,

and the district attorney consenting, it is ordered that D. Colden Murray and Frederick J. W. Barkman be, and they are hereby, appointed appraisers to appraise the value of the bark Kate, her tackle, &c., and lading.

And it is further ordered, that the clerk of this court give notice of the appointment of said D. Colden Murray and Frederick J. W. Barkman, as such appraisers. J. J. R.

Approved. SAM. R. BETTS.

12 Vol. 16, No. 161. United States district court for the southern district of New York. The Barke Kate, her tackle, &c., and lading, *ads.* The United States. Beebe, Dean and Donohue, pr's for cl'm'ts. Order of appointment of appraisers. Filed the third day of October, 1860.

13 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, &c., and cargo, *asm.* THE UNITED STATES.

And now, Charles P. Lake, intervening for the interest of himself as owner of the vessel and carrier of the cargo, appears before the honorable court, and makes claim to the said vessel, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of United States. And the said Charles P. Lake avers that he was in possession of the said vessel, her tackle, &c., at the time of the attachment thereof, and that the person above-named is the true and bona fide owner of the said vessel, her tackle, &c., and carrier of the cargo, and that no other person is the owner thereof; and the said claimant the true and lawful bailee thereof, as owner and carrier, wherefore he prays to defend accordingly.

CHARLES P. LAKE.

Sworn to and subscribed this 13th day of October, A. D. 1860, before me. GEO. W. MORELL,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctors for Claimant.

14 Vol. 16, No. 161. United States district court for the southern district of New York. Bark Kate, &c., *asm.* The United States. Beebe, Dean & Donohue, proctors for claimant. Claim of Cha's P. Lake, filed the seventh day of October, 1860.

15 United States district court, southern district of New York, in admiralty.

THE UNITED STATES
vs.
THE BARK KATE and cargo.

The undersigned having been duly appointed and sworn as appraisers to appraise the value of the bark Kate and cargo, do report that they have examined the same, and do find that the vessel is worth the sum of four thousand dollars, and that the cargo is worth the sum of five thousand two hundred and two $\frac{15}{100}$ dollars.

Dated New York, Oct 16th, 1860.

All which is respectfully submitted.

F. J. W. BARKMAN.
D. COLDEN MURRAY.

16 Vol. 16, page 161. United States district court southern district of New York, in admiralty. The United States *vs.* The Bark Kate and cargo. Appraisers' report. Filed October 17th, 1860.

17 United States district court, southern district of New York, in admiralty.

THE UNITED STATES
vs.
THE BARK KATE and cargo.

We, the undersigned, having been appointed appraisers to appraise the value of the bark Kate and cargo, do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

F. J. W. BARKMAN.
D. COLDEN MURRAY.

Subscribed and affirmed to this 4th day of Oct., 1860, before me as to F. J. W. Barkman.

O. R. STEELE,
Notary Public.

[SEAL.]

Subscribed and affirmed to this 9th day of Oct., 1860, before me, as to D. Colden Murray.

O. R. STEELE,
Notary Public.

18 Vol. 16, page 161. United States district court, southern district of New York, in admiralty. The United States *vs.* The Bark Kate and cargo. Appraisers' oath. Filed Oct. 17, 1860.

19 At a stated term of the district court of the United States of America for the southern district of New York, held at the

United States court-rooms in the city of New York, on Tuesday, the 23d day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK KATE, her tackle, &c., and lading. } Vol. 16, page 161.

The marshal having returned on the monition issued in the above entitled cause,

"The bark Kate, her tackle, &c., and lading attached, notice given and proclamation made:"

Thereupon Messrs. Beebe, Dean & Donohue appear for the claimant, and have one week to file and perfect the answer of the claimant herein.

THE SAME
vs.
THE SAME.

Mr. Donohue, proctor for the claimant, moves to discharge the vessel, &c., cargo from arrest, one bond having been already given.

The U. S. district attorney opposes the motion.

Mr. Donohue argues in reply.

Mr. Henry closes the argument in behalf of the United States.

Cur. adv. vult.

20 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the thirtieth day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, &c., and cargo,
ads.
THE UNITED STATES. } 16, 161.

This case having been heard on a motion on the part of the claimant as owner, to discharge the bark Kate from a second arrest, or that the bonds given on the first arrest be discharged, or renewed by the same obligers, and substituted for the vessel on her second arrest, and that she be discharged therefrom, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the said motion be, and the same is hereby, denied, but without costs.

SAM'L R. BETTS.

21 Vol. 16, No. 161. United States district court for the southern district of New York. The bark Kate, her tackle and cargo, *ads.* The United States. Beebe, Dean & Donohue, proctor for cl'm'ts. Jas. J. Roosevelt. Decree denying motion to discharge from second arrest, without costs.

Filed the thirtieth day of October, 1860.

22 U. S. }
KATE. }

U. S. }
vs. }
WEATHER GAGE. }

U. S. }
vs. }
THOS. ACHORN. }

I consent that the respondents have one week further time to answer.

Dated Oct. 31, 160.

J. BUCHANAN HENRY,
Asst. Dist. Att'y.

Endorsed: 16, 161. U. S. district court. The United States *vs.* The bark Kate. The same *vs.* bark Weather Gage. The same *vs.* brig Thomas Achorn. Jas. J. Roosevelt, U. S. D. att'y. Consent for 1 week further time to answer. Filed 31 Oct., 1860.

23 At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Wednesday, the thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES }
vs. }
THE BARK KATE, &C. }
THE SAME }
vs. } Vol. 16, page 161.
THE BARK WEATHER GAGE. }
THE SAME }
vs. }
THE BRIG THOMAS ACHORN, &C. }

On filing a consent signed by the U. S. district attorney, and on motion of Mr. Donohue for the respondents in the above entitled

causes, it is ordered that the respondents in each cause have one week further time to answer.

24 Vol. 16, No. 161. United States district court for the southern district of New York. The United States *vs.* The bark Kate. The same *vs.* The bark Weather Gage, &c. The same *vs.* The brig Thomas Achorn, &c. Beebe & Donohue, proctors for respondents. Order for one week further time to answer. Filed the thirty-first day of October, 1860.

25 U. S. district court.

THE BARK KATE, &c., *ads.* THE UNITED STATES. } 1st cause.

THE BARK KATE, &c., *ads.* THE UNITED STATES. } 2d cause.

SIR: Take notice on the pleadings, proceedings, stipulations, and orders in the above actions, and on the affidavits on the motion heretofore made in the second above entitled actions, a motion will be made before this honorable court, at the court-room in the city of New York, on the 3d day of November next, at 11 o'clock a. m., for an order consolidating the above two actions, or for such other or further relief as may be just.

October 30, 1860. Yours, &c.,
BEEBE, DEAN & DONOHUE,
For Claimants.

To J. J. ROOSEVELT, Esq.,
U. S. Dist. Att'y.

26 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Goodenough, of said district, being duly sworn, says that on the 30th day of October last, he served a notice, of which the within is a copy, on J. J. Roosevelt, esq., U. S. district attorney, by delivering the same to him personally.

THOMAS M. GOODENOUGH.

Sworn this 3d day of Nov., 1860, before me.
F. A. WILCOX,
Notary Public.

Endorsed: 16, 95, 161. U. S. district court. Bark Kate, &c., *ads.* The United States. Same *ads.* Same. Notice of motion to consolidate, &c. Beebe, Dean and Donohue, proctors. Filed Nov. 3d, 1860.

27 U. S. district court.

THE UNITED STATES
vs.
THE BARK KATE.

We certify that the bark Kate and the cargo now appraised by us is the same vessel and cargo previously appraised by us, the stores of the vessel being changed in part.

Dated Oct. 15, 1860.

F. J. W. BARKMAN.
D. COLDEN MURRAY.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward Smalley, of said district, being duly sworn, deposes and says that in the early part of July last, at the port of New York, he loaded the bark Kate as stevedore; that subsequently, and during July aforesaid, the said bark was seized and discharged by the U. S. authorities, and that deponent reloaded the said bark in the latter part of August last, with the same identical cargo, and none other.

EDWARD SMALLEY.

Sworn to before me this 16th day of Oct., 1860.

[SEAL.] O. R. STEELE,
Notary Public.

28 U. S. district court.

THE UNITED STATES
vs.
THE BARK KATE.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles P. Lake, being duly sworn, says that he is the owner of the bark Kate above named, and the sole owner thereof; that deponent chartered said vessel for a voyage to the coast of Africa, trading, and to return to New York; that the vessel was loaded with the goods of the charterer, and the vessel ready for sea on the 2d day of July; that on the 3d day of July, 1860, the said vessel was seized by Hon. Emanuel B. Hart, surveyor of the port of New York, by the order of the collector of the port; that said vessel was detained until about the middle of July, the officers of the government asking that time to examine her; and then the cargo, without the consent and against the wish of deponent, was entirely discharged from her, and placed in a public or bonded warehouse, where the same was held under the authority of the United States; that in consequence of the legal vacation, deponent could not procure an order to bond and discharge until the 30th day of August, 1860, when the cargo was immedi-
29 ately returned to the vessel, and that the cargo so returned was her original identical cargo, and returned to the vessel from

the store in which the government placed it, and the vessel again ready for sea, when she was again seized for the same cause as before, by the surveyor, by the order of the collector; that notwithstanding said vessel and cargo was duly appraised and bonded, and discharged by order of court, and had not left this port, the same proceedings have been had directly over again, and said vessel now held in custody; that the voyage for which said vessel is detained is a legal and legitimate one, and for no illegal or improper purpose whatever; and deponent further says, that in consequence of the first discharge of the vessel, the cargo was injured and damaged fully to the extent of one thousand dollars, and that he was obliged to pay for and incur obligations for the storage, landing, and reloading of the cargo to an amount of at least nine hundred dollars; that stores of the vessel to an amount of at least four hundred dollars have been entirely destroyed or used by the U. S. officers.

CHARLES P. LAKE.

Sworn to before me this sixteenth day of Oct., 1860.

[SEAL.] CHAS. H. BROWN,
Notary Public.

30 SIR: Please to take notice that on the foregoing affidavits and the papers on file in this cause, and the papers on file in the case against the same vessel and cargo first commenced, a motion will be made on the 22d day of October inst., before the dist. court of the U. S. for the southern district of New York, at the court-room, at the opening of the court, that the vessel and cargo be discharged from arrest, and returned to the possession of the claimant, or for such relief as may be just.

Dated Oct. 10, 1860. Yours, &c.,
BEEBE, DEAN & DONOHUE,
For Cl'm'ts.

To Hon. J. J. ROOSEVELT, *U. S. Att'y.*

Endorsed: 16, 95, 161. U. S. dist. court. The United States *vs.* Bark Kate and cargo. Affidavits and notice of motion. Beebe, Dean and Donohue, clm't's proctors. Filed Nov. 3, 1860.

Adj'd to 23d, at 11, Oct. 22, '60. J. J. R.

31 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the sixth day of November, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, &c., CHARLES P. LAKE, cl'm't, *ads.* THE UNITED STATES.

THE SAME *ads.* THE SAME. } 16, 95, 161.

This case having been heard on a motion on behalf of the claimant to consolidate the two above-named causes into one suit, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the motion be, and the same is hereby, denied.

SAM. R. BETTS.

32 Vol. 16, No. 95, 161. United States district court for the southern district of New York. The bark Kate *ads.* The United States. The same *ads.* The same. Beebe, Dean & Donohue, proctors for cl'm'ts. J. J. Roosevelt, U. S. D. att'y. Decree denying motion for consolidation. Filed the sixth day of November, 1860.

To the honorable Samuel R. Betts, judge of the district court
33 *of the United States for the southern district of New York.*

The answer of Charles P. Lake, owner of the bark Kate, her tackle, and carrier of the cargo laden on board, to the libel of the United States, respectively shows:

First. That he has duly claimed said vessel, her tackle, &c., as owner, and the cargo as carrier.

Second. That he denies each and every statement and allegation of the libel herein.

Third. That all and singular the premises are true.

Wherefore the claimant prays that the libel herein be dismissed with costs, or for such relief as may be just.

CHAS. P. LAKE.

Sworn to before me this 8th day of Nov., 1860.

G. W. BACKER.
Com'r of Deeds.

BEEBE, DEAN & DONOHUE,
For Cl'm't.

C. DONOHUE, *Advocate.*

Endorsed: 16, 161. U. S. dist. court. Bark Kate and
34 cargo *ads.* The United States. Answer. Beebe, Dean & Donohue, for cl'm't. Filed 8th Nov., 1860.

35 U. S. district court.

THE UNITED STATES *vs.* THE BARK KATE, HER TACKLE, &C. } 16, 161. Judgement of the court. Decisions No. 26, p. 108.

M. Wilcoxson, for U. S. Messrs. Beebe, Dean & Donohue, for cl'm'ts.

Evidence for U. S.

Nov. 19, 1860.

Captain John Faunce sworn: I am captain of revenue cutter Harriet Lane. H. L. was on 3d July, 1860, off Battery. (Objection to all circumstances concerning 1st seizure.)

It was middle of day I got under way and anchored inside of Hook, some time after 12. About 4 o'clock p. m. discovered steamer Yankee; ahead was small tug Magnolia which created suspicion in my mind. (Objected to.)

After Kate had got past Romer Shoals, I got under way with the H. Lane for purpose of speaking or boarding her. When off the buoy or bar I came up to bark, hailed her; ordered her to stop; sent officer on board; ordered officer to take ship to city, and anchored her close to H. Lane. Magnolia was coming in just after Kate stopped; came in over East Bank, and just before she got to Coney Island I crossed the bows of Yankee, who had Kate in tow, for purpose of cutting off Magnolia. Just below Coney Island I came up alongside of Magnolia; hailed her, and told captain that I wished to talk
36 with him. I boarded her by an officer, with orders to take her to city—officer Berry. Sent constable sent on Kate. After anchoring off Battery, Magnolia came up close to us; officer brought on board H. Lane 4 or 5 passengers, and after being there little while I released them; also boat. Can't say who were passengers. Mr. Cormick was one.

(All that took place on Magnolia is objected to; also enumeration of persons on board.)

Mr. Da Costa was there also. I knew Da Costa, but not the others. Da Costa was on board Braman. (Anything relating to Da Costa objected to.) I saw Da Costa on board of Braman 4 years ago. (Like objection.)

I went up to speak to Da Costa, but he did not recognize me. I dismissed all but Da Costa. Bark laid there until having come up in tow of Yankee, soon after Magnolia. I kept my officers on board and went on board, and gave orders for no one to leave ship. Crew were on board until released by order from dist. att'y. Knew no one then on board Kate. Now I know Capt. Otto; I knew him afterwards; I said nothing to Capt. Otto, but took him on board my vessel after I arrived. I said nothing to him at that time. Saw contents of Kate's cabin, part of it while she laid astern of my vessel, and more particular examination was made after she laid over on dock. Saw 3 ordinary trunks with Da Costa's name. (Objected to.) I examined those trunks—saw them exam'd. They contained wearing apparel. I think Da Costa's whole name was on trunks. Light clothing was in trunks, for a warm country, I should think. It was summer clothing for warm climate. There was some thick clothing among them, but most were light. I think there was pr. pistols; can't say certain. There were, I think, 3 or 4 trunks; the trunks were in cabin—two in state-room and two in cabin. There were 2 state-rooms. Saw no other trunks in other state-room; there were

clothes-bags there. Trunks were opened in my presence—2 on board vessel and rest in this building. There was no ex'n on board; it was in marshal's office.

I paid no other visit except when the men were taken out.

When ex'n of trunks took place, I had gone with marshal on board. I thought Magnolia was connected with Kate, because she went out of Hook and stopped, and then run south 4 or 5 miles. She was not going after a tow. She then hauled to northeast. I was led to suppose her connected with Kate. Kate was up below left bank, and in a position to speak Magnolia. It was blowing fresh. Magnolia was standing to north or eastward when I approached the Kate, 9 or 10 miles off Long Island shore; this took place soon after
38 I had ordered Kate to return. Magnolia moved in. In my judgment, by her manœuvres, she was with Kate in some way. She was too small, as a general thing, to go out and look for tows. Kate was a flat, sharp, Bath-built vessel; should sail very well; looked like fast vessel; plenty of canvass and spars. She had levelling off of boards, over water casks, which continued for and aft the ship; there were no bulkheads except cabin and forecastle bulkheads. Casks of wine, I believe, over water casks. Casks filled with water. I did not taste it. Scantling was perhaps 4 inches each way. I searched cabin with Thompson; found provisions and small stores, also quantity of block tin pitchers, or pewter, or brittannia; would hold ½ gall. of water; were found in one of side lockers of cabin; were not visible unless you took off cover of locker and got underneath; locker is round side of cabin, 16 inches high, 12 wide, and goes back and forms part of berth for officers; hauled out good deal of stuff belonging to ship, but nothing else that search. *Mate Tennett's.* This was the 2d time. They were hoisting out water; I saw stores of all kinds, bread, &c. With exception of rum, the rest was stores. Detained Da Costa on board H. Lane. He was taken from my custody by virtue of this writ. (Writ subject to objections.) (Writ read; everything exhibited in writ objected to, marked Exhibit A. Petition marked Exhibit B, read, sub-
39 ject to objections.) He was surrendered in my presence by Lieut. Constable. (Warrant of remand, subject to objection, read. Exhibit C.)

(Affidavit of Mr. Andrews, on which bench warrant is founded, read. Subject to objection. Exhibit D.)

(Bench warrant, Exhibit E, read.)

Da Costa did not speak English while on my vessel in my hearing. He never replied to me in English at any time, although I have spoken. I was present when he was before Judge Russell; he was there. I heard him claim nothing. I saw lanterns, five or six, in cabin of Kate, in lockers; signal lanterns. A surf boat was on deck of Kate; a common size boat; can't give dimensions; about 23 or 25 ft. long, laying bottom up; not heavy boat; was for either freight or passengers. Da Costa did not know me when I seized him on Braman that I know of. Sailors on Kate were some Americans and Portuguese or Spanish; thinks they were Americans; perhaps ⅔ of crew were foreigners. I never saw but one condemned vessel as

slaver, (Braman;) she was sold. Don't remember Pinto by name. Da Costa was a Portuguese, I think. Was present when crew of Kate were brought up for exam'n; was present when I desired to examine Da Costa, and he being addressed made no reply. There was talk of interpreter. He signified that he did not understand a word by not answering; he made no jestures as if he understood.

Cross.

Sent officer and boat's crew on board, and directed him to take charge of vessel Kate. I seized her at that time. Order was not given till officer was on board. I waited till then. Ordered Yankee to tow her up; to proceed to city with bark. I had possession from that time till I handed her over to marshal. Handed her over to marshal 6th July; no one but officer and crew and Mr. Brown went on board when first captured. Constable went on board; they all remained on board bark; boat's crew were seamen of Harriet Lane. Da Costa was first bro't on board H. L. from Magnolia. My vessel was at anchor; Magnolia was close alongside. I detained him on board my ship, when I saw him, till he was sent on shore. He was on both vessels during the interval, back and forth; can't say how long he was on either; think he remained that 1st night of 3d, to the best of my recollection, on my vessel; I was not on board myself. He went on board bark with me, I think. He was requested to go, I think, in the boat; not positive if he went with me. Don't remember if he returned with me. Don't remember if he was on bark again; he may have been. I was not present when habeas corpus came for him. After that I saw him in court of sessions. I seized several others besides Da Costa on Braman; thinks McCrea. Don't remember names, but I think there was young man there. I was ex'd here once on this matter, I think. I suppose I must have been, but can't swear anything about it. My memory is indistinct as to trial of parties on Braman. I attended court long time. I suspected Magnolia connected with Kate. First went on board of Kate was on 5th, to make ex'n; this is 1st distinct recollection. Went with marshal and deputy. This was 1st ex'n. This exam'n was only for 2 trunks; lockers not touched that day; perhaps some of pitchers were found that day. Lockers are used to store things in. Did not look in hole that day; first I saw of hole being opened was at Atlantic dock, and then all lumber was out and part of stores; ground tier was not taken out that day; if had been any dry goods they were taken out before I got there. Marshal was there and discharging; her goods were put in storehouse; can't say whose store. Went over next day; found Raven on board 1st visit; he was one of those arrested; he was exam'd by district att'y at ex'n before commiss'r, and crew were discharged with Raven by dist. att'y's consent. Marshal or deputy opened trunks at their office. First I saw of trunks was on 5th. Ordinary pitchers that we found there were more than I thought at first, and signal lanterns.

Never was on coast of Africa, and have no knowledge how
42 things are managed there. Boat was sheer, and surf boat may have square stern. She could be used for any kind of service. If built for sea she would have more sheer.

Redirect.

Braman was taken in 1856.

Alfred Todd sworn: (Same objection to this witness as to first.) Pilot of tug Magnolia. On 3d July started from pier 11, E. river. L. Leaman, owner of Magnolia, told me to be at pier 11 at certain time on that day; told me that day at pier 8, where we generally get orders; went there about 2 o'clock; can't say; did not say what for, except that Mr. Cormick would be there, and would give further orders. After I was there some time, some one came on board, and Mr. Cormick said he was ready; don't know Capt. Otto; saw man on ex'n, who was on board boat on that day; saw 2 men, think one was Da Costa; saw him, the Spaniard, in room below; don't remember men pointed out; one of men was said to be Da Costa, I recollect tall Spaniard; can't say if it was Otto; thinks man I saw down stairs was same man I put on board Kate. I thought Spaniard was tall man. When Da Costa came on board I don't think I saw him; thinks
43 when I saw him had small basket of peaches. He was in pilot-house most of trip down; the other man was part of time in pilot-house, and then on deck. I steered tug; saw these men speak together, I think, on the way. McCormick said he was ready, and said which way he should go off from to North river. (Objected to.) Run down bay. We got alongside bark Kate, in tow of Yankee. Kate was ½ mile off going down bay, when I got off; got alongside of Kate off Bayridge dock; she did not stop, We ran alongside of Kate, and one of men, I don't know man by name, got off on to Kate with chronometer. McCormick did not state why I should go alongside. (Objected to.) I did not know why I went alongside; was about 3 minutes putting him on board, and then ordered to go on down bay to Sandy Hook; went ahead of Kate; saw Harriet Lane inside the point of the Hook, near New Wall. Kate and Yankee were then mile or ½ mile beyond us; don't remember saying anything to McCormick; was busy steering; might have said "cutter would take the bark sure;" don't remember McCormick said anything to me at that time about going on. I went pass Sandy Hook, mile or two from beach; saw cutter make for bark, and bark turned round when abreast of Roma. Roma is about northeast from Hook, and 1 mile
44 off. After H't Lane stopped bark, and headed up river, we changed our course; our course was not altered, when H't Lane first made for bark; don't know who told me to change course; thinks Mr. McCormick told me. H. Lane caught Kate to head to eastward. After, I am not sure, but think McC. told me to come up to city. Tug and Kate were then coming up. I supposed we were taking friends out to get on bark; always looked to McCormick for orders; was chartered by hour.

We slowed engine when we turned to eastward. McCormick told

me, it was after they were turned round. Da Costa was in pilot-house most of time; had never towed Kate before Capt. Faunce stopped Magnolia, about Coney island. Yankee was larger tug than mine; was enough to tow out the Kate; don't know when Yankee started with Kate. The man I call Otto and Da Costa did not talk much together; heard Otto say nothing when he went on board Magnolia. Chartered at $6 per hour; don't know who paid bill; nobody was near me except Spaniard, who was in pilot-house, when H't Lane stopped us. My impression was he could not speak English; did not see if he was watching Kate; did not know any one was going on board Kate. Can't say how long I was away—4 or 5 hours.

Cross.

45 Don't own any part of Magnolia; am still on board of her; all my interest is as pilot; never had anything to do with Kate before; never saw the men before, either of them. It is mere impression about two talking together; can't say for certain. It is a very common thing to take friends down bay with passengers; don't know man named Buck, who was on board my tug. In going down went within ½ mile of Harriet Lane; took swash channel, nearest to Hook, about mile and ½. When Kate turned, she was 3 miles off, going to southward, she to the northward and westward, the straightest course home was the way we took, as our boat can go over shoals. H't Lane was mile ahead when she started for home: did not attempt to avoid her. There was nothing concealed or different in putting passengers on board; he was the only person to go on board Kate. There were 3 or 4 others on board Magnolia who kept together.

Cause cont'd, Nov. 20, 1860.

Robert McCormick sworn: Agent for tow-boat Accurate, and clerk in ship-chandler's store, of Henry Hatron, 43 South st. On 3d July, 1860, I chartered St. Ing. Magnolia. (Objection to all as to 1st seizure.) Chartered from owner, Mr. Seaman; at 11 a. m.; chartered her for job I had engaged to do for Capt. Otto; arranged with Otto that same day to do his job; don't know who was with Otto; it was not

46 Da Costa; but some one was with him, I think, at our office. Otto said he wished a boat at 2 o'clock, and asked if I would have one for him at some handy place; I said I would; said he wanted me to put him on board his vessel; that was all. I never had seen bark Kate; I had been told he was capt. of her, and I presumed he meant Kate; he would come to the pier, and I would tell him where to go. He came to office, and asked if boat was ready, and was sent down to where boat laid; it was 2 p. m., pier 11, East river. No bargain was made with me. I asked Seaman if I could have his boat for that hour, and he said yes, and we arranged for so much an hour, 6 or $7; no arrangement with Otto; nothing was asked about it, and nothing ever is asked; there is no custom about paying or sending bill I. expected him to pay me the money; he came about 2 p. m.

I think he was alone; but some were at the head of dock, I think, of his party. I did not see Da Costa till we started; first saw him when we were going out of river, sitting in pilot-house; Todd was in pilot-house steering; one of the others was a friend of mine; one was Buck; one went for sails only, and the unknown man was the same who was with Otto at office. Otto said he was ready, and I told Todd; saw vessel, who was found to be Kate, 2 or 3 miles ahead in tow
47 of Yankee. Capt. Otto told me to put him on board that vessel, and I told Todd to go alongside of her. I had towed the Kate with Accurate several times; during previous month had towed Kate with Accurate; thinks she came from Brooklyn to New York and back again. I never saw this vessel before. (This is objected to by cl'm'ts.) She was towed two or 3 times; can't say as to points where she was towed; I got paid for these days' towing, I presume by Otto, as I gave bills to him, and he sent money to office; I signed the receipt, and there was no sign as to who paid money; this is very often the case. I have seen Antonio M. Ross; don't know if he had anything to do with vessel; don't know where Edward Smalley is; had nothing to do with stevedore of Kate; he once left order for a tow; don't know Edw'd Smalley; put Otto aboard Kate, near head; he had a few bundles in his hand; he asked us to go along down to Hook, and see him out, or said we had better go; said nothing else while on board; I think he said if lt.-boat was required to tow him out, he would signal for us, (steamboat signal:) we went on down ahead of Kate; we were left to our own discretion as to how far we were to go; rate of payment was by hour; my intention was to hail pilot outside, and get bill signed, or to get alongside and get my
48 money; can't run alongside outside of Hook; H't Lane was not visible when put capt. on board. The man called Da Costa stayed in pilot-house all the time; no remarks were made when we first saw H. L.; when we observed her nothing was said; don't think I saw Da Costa and Otto talking together; never had seen Da Costa before; never told Isaacs there was man Garcia, who was taken on Braman. Isaacs asked me who he was, and if I was instructed to put him on board; I told him not, and I did not know him; when we were outside Kate was in view; when I saw cutter stop her, and turn round, we turned to come home too; I did not go nearer to beach than I was obliged to; stopping of Kate caused conversation among us; I swore to this petition (objected to as irrelevant) for release of Garcia; I signed it at instance of Donohue. I was asked if there was man detained on board cutter, and if he was connected with bark Kate. I said I knew of no such connection. I heard that day his name was Garcia; he was called so, I think, by Capt. Otto. I don't know how it was put in as John Garcia; it was drawn by Donohue; Otto was not present; I did not see him; saw Donohue in room below. (Objected to.) 8 or 10 days after my ex'n, I gave my bills to Otto, and they were paid as mentioned; forget how much Magnolia's bill was; never knew a man named Charles P. Lake
49 Q. What was Garcia on board for?
(Objected and admitted, subject to objection.)

A. I don't know why he or others were on board; I considered all persons on board as accompanying Capt. Otto; I asked none; am familiar with towing business; Yankee is able to tow out Kate in weather like that; thinks Kate is hardly 400 tons; Otto said when I handed bills, "I'll see that you are paid in a day or two;" did not say who owned bark; never spoke of Antonio Ross; I never saw Otto till day before; don't think I spoke to Garcia.

Cross.

Of my own knowledge never saw Kate or knew she had been towed prior to that day except by hearsay; I have been in towing business since '50; it is often the custom for vessel to have two boats to go down; manner of hiring Magnolia was not unusual; when I get order to tow and my boat is busy I get another boat to fill order; nothing unusual in going down; when tug has been hired to go down in this way strangers are not prevented going down; sometimes they are charged; did nothing to avoid H. Lane coming back; going out we went mile from dock at Sandy Hook; when Lane stopped Kate they bore towards east about 3 or 4 miles from Hook.

50 *Redirect.*

Garcia was detained by Faunce.

Henry C. Smith affirmed: Custom-house broker and commission and forwarding agent; I cleared bark Kate; don't remember the day; July 3d she was cleared for owner Lake; Capt. Otto introduced me to Lake first; a bill of sale was shown to me just before she was cleared, and I was requested by Lake to get out usual papers, and I did it; I am not paid unless I get papers all through; register is often got out before clearance; both capt. and Lake were there when cleared; can't say positively which paid me; thinks Otto handed me money; Lake gave me money to pay fees or bills of sale; I know Ross by sight, never did business with him; don't know if Lake is in business; have seen him about for years; never knew his name before this day; I was paid my usual fees; she must have had more than one manifest; I did not get $25; I'm sure of that; I have done business with Otto for years; can't say how many; don't remember if connected with W. R. Kibby; last time she was entered was from Havana; remember his parties generally paid little less than others.

Cross.

Been in business 21 years; nothing unusual in clearing this vessel; no concealment and nothing different in papers about this case.

51 Thomas J. Brown sworn: Officer of customs; went down on board Lane; I was deputized to go on board Kate by Capt. Faunce; saw Otto on board Kate; only asked me if I did not remember him; it was on 4th that I had talk with him; no one was present, I think, when Hart spoke with him; I was and Hart were

present; Da Costa was brought on Kate by Hart where Otto was; Otto said that he had never seen that man before (objected to—admitted) in answer to Hart's question. This was on Kate, 3d July, afternoon, when Kate was at anchor; know Da Costa or person they call Da Costa by sight; when boarded Kate, Capt. Otto said he did not know what it meant their stopping him; said he had cleared for Africa, and was going on legal voyage, and would like to know why he was stopped; he said that if anything wrong was done after he got there, he would not be responsible; don't remember anything being said about his share; nothing about turning Kate over to new captain; never spoke to Da Costa but once; saluted him only; he extended his hand and drew it back again; Hart pointed out Da Costa to Otto, and asked if ever saw him before.

Cross.

No one else boarded Kate till she got here besides seamen.

Redirect.

52 Crew were Americans, Portuguese, Lee and Spanish; about equally divided; did not look at names on trunks.

Wm. Cartwell (same objection as to 1st seizure) sworn: Inspection of customs; was deputized by boarding officer to go on board Kate morning of 4th to take charge of her; orders were not to allow any one to come on or go off bark; staid there from 4th to 6th July; about 8 o'clock Capt. Otto came on board to wind chronometer; about 9½ Da Costa came on board from H. Lane; I had seen him there; Otto enquired who Da Costa was, and if he was in custom-house department; I said no, and asked Otto if he knew him; he said no; they did not appear to recognize each other; Raven was on board of Kate. (What acts passed between these people objected to.)

That day Duncan, of H. L., and I saw Otto and Spaniard Da Costa trying to correspond with each other on different sides of vessel; I called lieut.'s attention to it; mate rec'd piece of paper and passed it round to where Da Costa was, who had felt hat off and stopped a moment as if to read it; we saw this and asked if we w'd be justified in taking notice, and when Da Costa saw I was watching he put on his hat again; about that time Da Costa left where he was standing and got under a boat with mate and conversed with him; mate was English or American. Through the day mate and Otto enquired who Da Costa was and asked if he would remain on board all night; both came in cutter's boat; don't know if he was
53 forced to come on; did not seem so; he staid there all day and was taken on Lane again that night; during squall Otto's pants were torn, and went to cabin to mend them, and a seafaring man came and looked down; I did not recognize him as one of the crew; saw mate and Da Costa pass from one side to the other; mate and Otto would speak together and then pass over to other side; under boat they used gestures; I saw trunks and name on them; I knew Da Costa

was on them on a brass plate; two near table and some in state-room; Otto's things were in starboard side; when Otto was to go ashore he went down and opened trunks; I was there when they were all taken by marshal; Da Costa was on H. L., and appeared uneasy why they did not take him.

Cross.

All time vessel was in custody of U. S. officers only saw them talking once; could not hear words; judged by actions only; never saw Otto and Da Costa in conversation.

Manifests here put in evidence—that from Havana and from here; contents read, (objected to;) 1st marked No. 1; impost manifest, No. 2, (objected to;) shipping articles, No. 3; register, No. 4; register's oath, No. 5; crew list, No. 6; crew bond, No. 7; general clearance, No. 8; report of inspectors of cargo, (objected to,) No. 9.

Joseph Thompson sworn: Deputy marshal, after seizure
54 of bark Kate on 6th July. (Monition dated 6th July, put in evidence marked No. 10; libel put in, No. 11; claim of Lake, No. 12; exceptions of U. S., No. 13; aff't of Diehl, No. 14; order to bond vessel, No. 15; order appointing appraisers, No. 16; appraisers' oath and report, Nos. 17 and 18; order to discharge, No. 19; all these papers put in evidence.) I was authorized to break out cargo of Kate, and had copy of manifest; she was at Atlantic dock; exam'd cabin of Kate while in harbor; found some trunks marked "Da Costa;" don't remember how many; saw them opened on vessel; contents were linen clothes, &c.—large quantity clothes; case of pistols; ample supply for warm climate; there were other trunks in one of the state-rooms; name on piece of brass; trunks were brought here; found in lockers 2 doz. of pitchers and lanterns not in manifest; hatches were down; found large cooking stove and utensils in hole under main hatch not put together; in galley there was a usual cooking arrangement for vessel of that size; arrangement for cooking was about fit for that vessel and for such a crew; also found the articles in this manifest; I compared them with it and they were same except some I marked; 3 or 4 more than marked in manifest stowed fore and aft; 86 casks of water; one lot of boards and planks—not joists; about 5 or 6,000 feet—manifest says 5,000 feet of lumber; there was large water tank partially filled; it was very large
55 tank; it would hold at least 2 or 3 hogsheads; hole was free fore and aft; lumber was lying over casks; there was no deck made of it—it presented a smooth extent; 100 pipes of rum; over the lumber some beef (5 bbls.) that I did not find on manifest, and some tongues in bbls.; iron pots agreed with manifest; ex'd six boxes hardware and cont'd sheet iron boilers, 4 feet high, circular; they could be used for boiling anything, prepared with grate under and boiler on top with a small pipe; one roll of zinc not on manifest to put under stove; saw one bbl. beach sand; saw tar one bbl.; 2 bbls. lime not on manifest, nor ½ bbl. pitch; 6 shovels not on manifest—sort of scoop shovels to lift up dirt or coal; 2 bbls. molasses not on

manifest; saw doz. cups not on manifest; discharged all water, lumber, &c. I knew Da Costa when he was indicted for Braman; he escaped from officer who held him; never saw him since till brought up here; I was asked to see if he was same party who was arrested formerly, and was not in room when he refused to be examined.

Indictment ag'st Da Costa subject to objection, marked 20 and 21.

Cause adjourned.

Nov. 21, 1860.

Joseph Thompson resumed: Trunks were sent on board the Kate; don't know at whose request; saw them at office and on board. Da Costa was on them; they were sent away after Kate was
56 bonded. Kate is at Atlantic dock now. Don't know if she is discharged. Have not visited her since 2d seizure. Don't know that Da Costa tried to state his name as Garcia.

Cross-ex'd.

Ex'n was made prior to discharge under 1st seizure. Stove in main hatch was in pieces; about same size as one in galley; had been in use; an old stove. Ex'n extended to stoves as well as cargo. Boilers were all new, six in all; there were pots, besides; 30 of them would hold 2 or 3 galls.

Redirect.

Some of pots were loose and rest in iron-bound boxes.

James L. De Graw sworn: Entry and clearance clerk in custom-house; been there about 9 or 10 yrs. Clearance papers in all cases are checked by me. I know Henry C. Smith. He cleared bark Kate in July, 1860. Had conversation with him at various times in reference to her clearing.

(Objection made as to what Henry Smith did and said about clearance of Kate.

Court admits his conversations at the time of performing acts in reference to clearance.)

First act was on 17th May, 1860, in reference to clearance of Kate. Smith came to my desk at naval office either 17 or 18th May, and had just cleared sch'r Josephine, Capt. Carter, for coast of Africa, and on coming to my desk asked me why I persisted in reporting
57 these vessels to officers of government, (vessel going to coast of Africa.) stating there were officers for that business, and it was not my affair. Asked me if I had ever made by the operation. I s'd no not one cent. Well, s'd he, you can if you wish. I asked Smith if it was his intention to bribe or buy me. He said no, that he supposed I had scruples against that sort of thing, and we had other talk, and then he said he would see me after 3 o'clock; 3 is

hour for closing outside business. I stated this conversation to Franklin, head of naval office. (Objected to.) I asked Franklin for instructions; stated facts in writing; asked Franklin if money was offered should I take it. (Objected to.) Within ½ hour after clearance of vessel Josephine on that day, Smith laid $20 gold piece on my desk in office. (Objected to.) I took it and gave it to Franklin. Smith stated a few minutes after that he would soon clear bark Kate, the same day; he was not doing it at that time, (clearing Kate.) He then s'd it will be the same in future cases if you wish. In several subsequent talks between that and clearance of Kate the same statements were made by him in different forms. He is often in and out the office. After Josephine was seized, Smith made few communications to me and treated me very coolly. She was seized on Mon-
58 day succeeding 17th day of May—the 20th day of May. Except these conversations I don't know of anything else that was said to me in reference to Kate until 3d July,

It is admitted that collector will swear that he seized the bark Kate on 11th Sept., 1860, and directed De Forrest to make report of cargo. (Objected to.)

Smith stated to me on 3d July that he would not clear Kate for some days, but within an hour after that statement he brought papers and clearance of Kate for me to check. I checked papers and told collector of it. Smith s'd nothing more at that time. I informed collector of the clearance of this and other vessels (objected to) as slaver for coast of Africa. I did this immediately. (Objection made as to what Smith said after clearance.) About half after 3, as I was passing out, I met Smith on sidewalk; he simply remarked that he was going to Battery to see if Kate was seized and brought back. This is all in reference to 1st clearance of Kate. He did not apply to my knowledge to clear Kate again for 2d time. The day he applied for 2d time to clear a vessel he said I am now going to clear a vessel direct for coast of Africa. This statement was the day the 2d clearance was refused to bark Kate, and day of seizure. Don't know what hour she was refused, but his remark was an hour
59 or so before 2d application was refused. When Smith made this remark he had papers in his hand, which he held out to me. I don't know of my knowledge if custom-house had ever seized a vessel that had been once bonded. I know Smith was aware of that practice of custom-house undoubtedly. Don't remember any other remarks about Kate, but there was talk about others. I have omitted no material fact.

[Mr. Beebe moves to strike out the evidence of this witness. Reserved decision.]

Cross.

Up to 17th or 18th May no papers of Kate had ever been entered by Smith that I recollect. This paper is not filled up by clerk in office. Broker has nothing to do with filling up this paper. There is nothing on this paper that will enable me to say what broker

cleared the vessel. (Evidence refers to No. 2.) On 30th day of June she was through of responsibilities of inward voyage. My check is here for 17th May. These two checks are official. I am familiar with one of them, J. B. S. From that post entry was made up to 23d May, as to inward cargo. It does not follow from these papers that Buck was capt. Can't say from these papers who was master. First time Kate's papers were presented to me was on 3d July, and first act was done on that day; this was paper (No. 8) then presented to me. Prior to that no official act was done to me personally
60 or in my presence. Prior to this Smith had never brought me any paper but this about Kate, but I think he brought some when she entered as cleared from Havana. No. 4 is usual register given to vessels on 30th day of May. Conversations with Smith, which I have detailed, were on 17th or 18th of May. 1st conversation was on 17th or 18th. I was in office of collector when Smith made application to clear a vessel just after statement he made to me. Did not hear Smith use name of Kate, but heard clearance clerk use name of Kate, but Smith was not present, I think. Don't known Capt. Otto. Register must be had first before clearing. In naval office it is necessary to bring me clearance and manifest, (No. 1 to 8,) properly checked, ordinary way. It is brought generally by broker or clerk; sometimes all are brought together. They are brought to me for my inspection, to see that they are made in proper form, properly signed, and checked and sworn to, and clearance fees paid, and if correct, then I check.

Redirect.

Smith cleared no vessel on day he made the statement about slaver to me. Can't say why Buck is capt., because often capt. has ceased connection with vessel.

Charles W. Newton, sworn: Capt. Otto was brought before me in July on charge of being involved voluntarily, (objected to, as there is paper showing it,) connected with—. Remembers a man
61 on that day, called by some Da Costa; appeared to be foreigner. It was alleged by others, can't say whom, that his name was Garcia. I issued this warrant. (Objected to.) Incidentally there was question raised before me as to identity. Government proposed to examine Da Costa as witness. I was requested to have him sworn as witness. I addressed him in English, to be sworn. He made no reply. I supposed he could not speak English; it was a clear inference. Nothing was said. Mr. Donohue passed over to Da Costa, and U. S. att'y protested against it, and Donohue said something like he would talk with his client whenever he was required. Can't say if Donohue said he could not speak English. There was proposition to send for Tonelli as interpreter. Thinks case was adjourned to next day for interpreter.

Cross.

Crew and capt. were before me, and dist. att'y called crew one by one and exam'd them. You, as counsel, made condition that if they were exam'd as witnesses, they must be discharged as prisoners.

Dist. att'y proposed to examine Capt. Otto, I think, and counsel made same objection as they had done to crew. Pending this exam'n Da Costa was in charge of officer, but was not contained in this warrant. Counsel objected to exam'n of Da Costa unless he was
62 discharged, and they then said that if that is done we will get interpreter. U. S. att'y wished to adjourn ex'n till cargo was broken out, and counsel opposite. Otto gave bail then.

Redirect.

Capt. Otto was bailed by me according to notice, which was argued by dist. att'y, but he was not present at time it was fixed. Da Costa was under no charge at that time.

Sidney D. Ingraham sworn: Register clerk custom-house; been there 9 or 10 y'rs. Clearance papers came to me after being presented to clearance cl'k. Application to clear Kate was on 14th or 15th of Sept. This is or was manifest of Kate, marked 22; shipping articles marked 23. Crew list of Kate was made out at my desk on that day. (Exhibit 24) Crew list and register were all that were presented to me that day. They are generally sent up by master. Henry Smith came for purpose of clearing Kate. Clerk refused to give him papers, about 3 o'cl'k. Don't know if De Graw was present; thinks he was there after clearance was refused. Smith only said they had refused to clear her. Norton is clearance clerk, to whom these papers were presented. Saw Smith make application.

Cross.

I am very familiar with mode of business in custom-house; business of broker is to aid the person clearing vessel through custom-house; principal part of clearing is done by brokers. They take
63 the papers and present them to the clerks; then their business is done, after they are checked, as far as we know. Brokers give no instructions to officers relating to these papers. Collector, I believe, ordered that Kate's clearance was to be refused. It was not known as a fact, only impression outside. These papers did not go out of my possession.

Redirect.

Register bond and crew list, No. 5 and 7, were signed by Lake & Smith. Don't know what brokers get.

Recross.

Register bond is given when vessels change owners. Broker frequently signs register bond.

Wm. A. Booth sworn: Pilot of Harriet Lane; was so when Kate was seized. I don't know Da Costa personally; know him by sight; saw him taken on Lane; he was detained from sundown of 3d July (next morning went on Kate) to morning of 5th; he then went ashore by some process; I had conversations with him 3 times; 1st time I addressed him on 4th; I s'd good morning captain; he said I am no captain, and that is not my vessel. (Objected to.) Then handed N. Y. Herald, which had seizure of Kate, and he looked it over; he then went on board Kate, and I was ordered on Kate; and Da Costa was lightly dressed, and I remarked it when he got up, and said yes, I have got too thin clothing, but never mind, I'll make it all right to-morrow. I rec'd orders to go on board Lane, and to bring
64 Da Costa, and I told him so, and he got up and came with me. I was at exam'n before Newton, when question as to Da Costa's speaking English; he said nothing to comm'r's questions; saw counsel talk with him privately. The idea was carried that he could not speak English. I was appealed to, to know if he spoke English, and Mr. Beebe asked me who are you?

Cross.

Did not hear Da Costa say anything in court-room.
Boat of cutter took Da Costa to Kate.

Anthony S. Woods sworn: Inspector of customs. Had instructions to break out Kate; ex'd her cargo about 17th Sept.; instructions were from Hart to discharge cargo on bark Kate. Mr. De Forrest was with me; found Kate at Atlantic dock, south pier; she had not been moved from where she was first placed; found hatches down, and crew on board in charge of Harriet Lane; crew were mostly mixed; nationality Irish, Spanish, and perhaps Portuguese; only recollects 2 foreigners distinctly. Capt. Otto was there; I saw him only once. This is a report of all we discharged on board of her, (No. 9;) left some things on her undischarged, mentioned as ship stores.

Nov. 22d, cause continued.

Woods recalled: Have compared this report (No. 9) with manifest, (Exhibit 22.) Exhibits 25 and 26 (objected to) are memo-
65 randums of goods not on manifest, (No. 22,) and are on No. 9; they contain list of articles found on Kate, and not on manifest. (These papers shown subject to objection.) Lanters were found in cabin; they were new; 12 pitchers were in cabin; can't say how much they would hold, perhaps a pint or so; dozen tin cups were in cabin; 10 bbls. of beef were in hole; 3 bbls. of pork in hole; 21 bbls. of bread in hole. It was necessary to break her out to see these things; 3 boxes of preserved meat were in hole; everything in way of stores were under the hatch. I have discharged zinc from other ships; this zinc was about 4 feet wide; can't say how

large roll; this is in reference to discharge on 17th Sept. Tar came out of hole, and pitch too; lime also; shovels were new and in hole, six of them. I saw stove on wharf, and knew it belonged to Kate, because mate wished to sell it; it was old stove; mate was Raven; it remained in same place; mate asked me, joking, what I would give for stove. Water-casks were filled. Boxes contained furnaces, with boilers on top; they were termed boxes of hardware; did not examine them closely; could be used for cooking. 3 bbls of vinegar were in ship's hole; casks for water were stowed crosswise in hole; they made complete flooring from floor to aft; no bulkheads but
66 cabin. Lumber was piled closely on top of casks, and formed a flooring throughout whole length of vessel, and cargo was over that; crew of Kate were on board while breaking out; saw one trunk belonging to Capt. Otto.

Cross.

Remember only one trunk, and some chickens that are not on manifest, (number 9;) considerable number in coops. This list is what we both found, (Nos. 25 and 26;) are articles which are on No. 9. The stove was on dock. I did not see it discharged from vessel. Lumber was laid for and aft. I was there when they began breaking out. Her hold was full of cargo; don't recollect shape of boiler; it could be used for cooking. Some of water-casks were on deck; all casks I found were put down in No. 9. Molasses in hold, and sand and pipe-clay, and olives in same place; did not see inside of box for oil; some of these things might have been in cabin, which was small.

Isaac De Forrest sworn: Associate of Mr. Woods; corroborated Woods's statement. There was iron tank for water in her hold, six feet square; can't say if it was full or empty; it was rusted; don't remember looking in hole at first, so I can't say about casks and their position. Boilers, one of them, had place for pipe to go out; the rest were boiler iron, 2½ feet across, and one had grate under; there were six altogether; would cook, perhaps, quarter of bbl. of rice in this pot.

67 Mr. Woods recalled: The water-casks were laid lengthwise in ship, and sleepers laid crosswise, and planking fore and aft.

Francis B. Thurber affirmed: Saw some part of Kate reladen; saw some of water-casks refilled; I have charge of Wheeler's stores; they were filled with fresh water; saw no tank in her.

Sidney S. Norton affirmed: Chief clerk of 4th div'n, custom-house; business to enter and clear all vessels to and from ports; been there 2 y'rs in Sept.; I know the men who clears vessels for coast of Africa. (Objected to.) Don't know of Charles P. Lake in that trade; he never cleared to my knowledge any vessel but Kate for Africa. R. P. Buck & Co. and E. R. Ware clear for Africa, and there may be others; also Yates & Porterfield.

Recognises this paper. (Objected to.) No. 27 copy. Broker presented me this paper, Mr. Smith, for clearing the vessel, presented first July 3d, 1860. I gave him clearance for vessel. This same paper has been presented to me twice: once in July, and once in Sept., when she was refused. This is shipper's manifest.

Cross.

Custom is that shipper must clear his goods before vessel clears, and I must be satisfied of that before I clear. Presented first time and I cleared, and 2nd time I refused; don't know if Yates
68 & Porterfield own the vessel they clear.

Redirect.

De Graw was not present when 2d clearance was refused. Number of clerks who have to do with this, but not in my vicinity; not in sight.

Recross.

Mr. Ingraham and Stewart are in my room, and they have to do with clearing, examining officer's returns, &c. All the other clerks who are connected with this business are in different rooms.

If it is refused here, it goes nowhere else. De Graw might have been there, and I not see him.

John Helme sworn: Officer of this court in and after July, 1856. (Same objection.) Had then in charge Da Costa for fitting out Braman for slave trade; he 'scaped from custody, (all objected to,) before he was tried in 1856. I should say he was Portuguese; I did not have charge of him all through; I saw him in court.

(*Exh.* 28.)

[Minutes of court, July, 1856, here introduced to show that Da Costa was arraigned and pleaded not guilty, ordered to find bail, Exhibit 28.]

(*Exh.* 29.)

Recognizance forfeited, Exhibit No. 29. (Subject to objection.) He spoke to me scarcely at all.

Cross.

I was in navy, 1813, and in merchant service. I have been in India trade, and we took water as ballast; it was good in those days.

(Mr. Donohue examines him as witness.)

69 In them days they had zinc to go round masts; it is good for chafing. Have seen lime used for timbers of a ship for sanitary purposes.

If you go to port where they will not allow stone ballast to be thrown over, water is good ballast.

I have been in service for 20 years.

Capt. John Faunce recalled: I took Da Costa in this port in July, 1856, for being engaged on board Braman. (Objected to.) This bark was about south part of Staten Island. He was three or four days in my vessel—the Washington gov't cutter. I was in command. Da Costa was under my observation, and I could never mistake him. I knew him well enough.

I was present here to indentify Da Costa about 6 July, 1860. (Subject to objection.) He was here present and I understood he claimed to be Garcia. I was sworn then. I did identify him before court. He was a Portuguese and was the same person I took from Magnolia, and he was present before Russell; he then claimed to be Garcia, certainly not Da Costa. (Objected to.) A bark like Kate in regard to stores and bbl. flour, bbl. rice, 13 bbls. of bread, &c., would be enough. (Excepted to by defence.) Men never eat more than pound of meat and 4 or 5 ounces a day. In merchant service they don't measure. 4 or 5 bbls. of beef for six months' voyage, and half that much pork, for crew of 13 men, ½ bbl. at least molasses, 1
70 bushel of beans and peas; rice depends on circumstances, not more than 50 pounds; it is generally given once a week; 2 bbls flour about right; perhaps 15 bbls. of bread, about 10 galls. or ½ bbl. of vinegar. There is no criterion by which we can go; it differs in every vessel; in merchant service it is object to feed as cheap as possible. I saw tank of Kate; can't say what it would hold; it was in after part of ship. She had enough water on deck to take her there and ½ way back. Should not think that lime would form part of outfit; it is well enough to have some lime, but not so much. Shovels are very necessary on board ship; on all ships. Two shovels would do the work of ship like this.

She would not use a bbl. of tar, but there is economy in buying a barrel instead of half one. They require tar. Five lanterns is rather more than merchant vessel of that class carries. Pitchers, I should think, were not part of necessary stores, nor tin cups. Did not see boiler of Kibby. Don't know where rum came from. I was before Newton, and Beebe & Donohue appeared as counsel of Da Costa.

Cross.

I never heard Da Costa claim to be of any name; did not hear him speak at all. Left merchant service 1837. I was commanding then Durant brig. I had commanded her 9 months; have not fitted
71 out merchant vessel since. Never was on coast of Africa. There were, I think, six or seven casks for water on deck. All these articles I have spoken of are stores. Men must furnish tin

cups for tea and coffee by themselves; there is nothing unusual in having cups. I use pitchers on board H. L. Question of supply depends on liberality of shipper. Can't say if I ever heard of statute requiring certain amount of provisions. It requires 100 pounds of salt meat, 100 pounds of bread, besides all other stores, to go on six months' voyage.

Redirect.

This estimate of mine was what I thought enough for crew of this sort. I have been supplying vessels for 20 years. (Two recognizances of Da Costa's appearance offered and objected to, Nos. 29 and 30; offers outward manifest of schr. Josephine. Objected to. Exhibit No. 31.)

It costs about 60 cts. per 100 galls. to put fresh water on vessels, and sea water it would be the cost of pumping it in. Salt water would be most economical for ballast. Kate had 16 or 18 spare spars and sails. A spare top mast and spare yard is about all that is necessary. She had unusually large quantity. I thought there was a greater supply than was necessary. All vessels carry stud-
72 ding sails; the sails thought were made for this ship, and the spars could be fitted for that vessel, I thought.

Recross.

These questions were suggested by me. All vessels wish to make the best time they can. Some are better fitted out than others.

Government rests.

Subpœna was put in for Dwight, but he was not found.

[Motion by cl'm'ts to strike out all the testimony in regard to first seizure.]

Claimants' evidence.

James Scott sworn: Live in New York; business, mariner, since 13 y'rs old, 17 years. Have been on coast of Africa in bark Edwin; went from Boston; was on coast about 6 weeks. Visited more than one port to Bena. Edwin had assorted cargo. [Looks at manifest of the Kate, (22 Exhibit,) and says,] we had some of these things on board; had provisions. Edwin was about 400 tons. Had some rum and bread; don't remember if bread was as cargo; had beef and pork among cargo; had flour and lard; we carried on deck 4 or 5 cast-iron kettles. I know there were castings which were represented as furnaces, and landed at 2 different ports. We had lumber on
73 deck; not a great deal; plenty of gin.

Cross.

Don't know who owned Edwin; don't remember capt.'s name; it has been 7 y'rs ago, and my first and last voyage to Africa; I think

his name was Clark, a German. Vessel belonged to Boston; it was on her stern; cleared for west coast of Africa; first went to west coast castle; Congo river is not near there; about 10 degrees off. It is a trading post; Danish, I think, own it. I shipped for the voyage and back to any port in U. S. Voyage took 5 or 6 months. They deposited produce at different places. Stopped at mouth of Niger. These kettles were on deck. They were different sizes; smallest one would hold 2 bbls., and largest perhaps 8.

I inferred they were to clarify oil in. Had very little lumber; some below and some on deck. Know rum made in West Indies, called arrack. Castings were for building a fire and were for putting a cauldron on top; furnaces would have fitted the smaller kettles, larger ones would require to be set on brick. Edwin was not stopped in Boston; never heard she was thought a slaver. I know parties that sent out this vessel were in legal trade in Boston; was consigned in Africa to American house. Can't say how vessel sailed,
74 charter-party or not. Carried extra spars; one spare top mast, one spare topgallant mast and royal mast, spare fore yard; there were some spare booms and yards, small ones; 2 studding sail booms. She had plenty of spare sails. Know there were pitchers, but don't know how many; have seen 2 or 3 in ships. Don't know how much vinegar. There was lime on board, and zinc, a roll used for chafing gear. Know we had lanterns; can't say how many; no tin cups. Can't state amount of stores for crew. Crew were 6 before mast, mate, capt., boy, steward; different nations. Came from Liverpool to Boston and shipped from there. Saw cargo discharged. She was clear fore and aft.

Henry S. Bush sworn: Boat-builder. I have seen surf boat of Kate; it is about year old; have built boats for Africa that have come back; the boat I saw on Kate is ordinary boat for going there; the boat is made different.

Cross.

Have no other occupation but boat-builder. Have seen vessels that have been seized on coast of Africa. Don't know if I built boat for them. This boat was sharp both ends, not broad beam; about 22 feet long, 6 ft. broad; would pull 5 oars; 2 feet 3 inches
75 deep; would take about 4 men to lift her; built of cedar and oak. Should think she was made for heavy cargo; men or anything else.

Otto W. Raven sworn: Been on board Kate as 1st mate; been to sea for 20 y'rs; merchant service. Have seen her sails, and she has nothing unusual to my knowledge; when ready 2d time had no stove; but one in galley; stove was on dock; was old, condemned stove; is there still; it was replaced by new one. Capt. Otto shipped me to go to coast Africa on trading voyage. I was ashore from time I went to prison; never saw vessel during that time; cargo came out of

Wheeler's store; nothing else came out of store except cargo. When I left, he handcuffed all; cargo was on board; when I returned many things were missing, and these things were replaced; nothing but what were stores were replaced on her; wood, coals, potatoes, &c. This is usual for every vessel to go to warm climate, to take lime, and tar and pitch. Chafing gear is made of different things. Zinc is cheapest, and does not cut rope so much as copper; had one roll on board. Men take tea and coffee out of tin cups. I have
76 been in different parts of Africa, Table bay, Loando, Limons bay; have seen furnaces taken out there and used.

Cross.

Commenced in Bremen for sea, then in American ship to East Indies, Ceylon, and then in English bark, about 17 y'rs ago; brought back general cargo; don't know who owned her; went to Berbice, and came to New York, about 16 or 17 y'rs ago; shipped in Madonna; thinks capt.'s name was Jordan; can't say if went to St. Paul's; came back here; went to different places; been 4 or 5 times to coast of Africa; last time in bark Cora, ½ year ago; she belonged to Gov'r Morgan; left Cora; I was sick with broken arm; went from Cape Good Hope to Rio, and then home; then went to Havana, and nowhere since. Margaret Thompson, Madona, Cora, Yankee, Ranger, to coast of Africa.

Have known Otto 4 years; can't say where he has sailed; he was once on board Baltic; don't believe he ever was on coast of Africa; never was on other vessel, seized as slaver; don't know Da Costa; heard him called Da Costa by cutter's crew; never saw him before, but since in Eldridge st. jail; don't know anybody about Kate, but Otto; don't know Hernandez or Ross. On 3d July we started
77 about 2 o'clock from Atlantic dock.

Don't know Lake. Yankee came there to tow us out. Otto never said what he was going for. I was exam'd, and discharged; been going to and from coast of Africa, about 4 or 5 voyages; sometimes 5 or 6 mo's, and 8 or 9 mo's; knew nothing of object of voyage. It is not easy to get berth as 1st mate; I waited till she began loading again. Otto said he wished me to wait for vessel; I was not to be paid for mean time. I rec'd $40 per month; saw Otto at my boarding-house, when he was under bail. Have been before 1st mate, with more wages. We had 2d time some of old crew; she was arrested before she left dock 2d time; know nothing about crew.

Redirect.

Never saw Da Costa till he was sent from cutter. After capt. came on board; did not know any one else was coming on board. I was in Eldridge st. 5 or 6 days, with Da Costa; never spoke to him; can't speak *speak* Spanish or Portuguese. Otto is a German; never attempted to talk to Da Costa on board Kate, or carried paper to him from capt.; never saw them talking together.

Cause adjourned.

Redirect continued, Nov'r 23d, 1860.

Never talked with Da Costa at all in prison, or on ship. Otto
78 took command, I think, on or after 24th May, 1860. I went on board the same day; Capt. Bush was on board that day; know how cargo was stored, as I saw it in its place; it was stowed in the usual manner, and I w'd store it just that way, if I was stevedore.

Recross.

Have known Capt. Otto 4 y'rs; both are Germans; never sailed together. I am naturalized citizen; have been so 10 or 12 y'rs. Capt. Otto and I are friends, like I am with many others; I met him last winter, and since that time I have been in connection with him ever since; never saw any one else connected with Kate, except Otto. I was not on Cora when she was seized; I sailed on Cora about year and half ago. First time I saw Da Costa, when he was brought on board of Kate, on 4th July; Otto and Da Costa were on at same time; they all eat on deck together. No word passed between Otto and me about Da Costa. I asked Stevens, 2d mate, who Da Costa was; don't remember giving him or anybody else a piece of paper; can't swear positively, except that I know I never carried paper from Otto to Da Costa; can't say if I crossed over to Da Costa; I had no talk with Otto about him; 8 or 9 of us crawled under boat to keep out of rain; can't say if Da Costa was there. The cabin was locked;
I spoke to one of the men, and said it was very hard to be
79 locked out, and one of the men afterwards kicked open cabin-door. When Kate was seized, in Sept., she was ready to sail. Otto was to go with us. Never have been arrested on any other charge, but this, in any country; have had lawsuits. I received no money during interval from Capt. Otto. I stayed at Bush's Hotel; did not see any Bush on Magnolia, and only from talk I have heard here, I understood he was on board; never saw Da Costa at Bush's. Have not been paid since 14th Sept. by any one connected with Kate; don't know where Otto is now. There is understanding for me to go again, when vessel sails; I now sleep on vessel; no crew there; I am there by Otto's permission; marshal had no objection to it; vessel is now empty; no arrangement with crew to my knowledge. I am on pay now, but have received no money; have no contingent interest in voyage of Kate; never heard Otto say if anything was made, he would have his share; can't say when I saw Otto last. I came here to hear case; was not subpœnaed.

John M. Machado sworn: Been in business here since 1847; prior to that I resided on coast of Africa—and have traded there since 1836; been trading on all coast from Benguela to Morocco; my business before '57 was with coast; I had sometimes 10 or 12 ves-
80 sels there. I owned many of the cargoes and many were bought on commission. I am and ought to be as well acquainted with African trade as any person in America.

Look over this manifest, (No. 22.) This is usual character of cargo, and I see nothing there that I would not generally send. Look at this list, (Exhibits 25 and 26.) It is usual character of stores generally sent to coast or anywhere else; I, when I traded with England from Sierra Leona, I have often sent furnaces with party for palm oil; we don't send so many from here because they are not so cheap; I have sent them from here several times—especially for palm oil; palm oil is generally made in iron kettles and then put in casks. (Describes mode of making it.) We generally send large stores, as voyages are varied longer, and we send extra stores to supply Europeans who are there, and most of bread used there comes from this country; when I sent for palm oil I generally sent rum and flour; we could not get palm oil on coast without taking casks from here; we generally put them on ground tier and over that merchandise; casks filled with water; always put fresh water when sent for oil; on coast there is no way to get water except from forts, and it costs money; besides, men
81 who bring oil on board drink a great deal, and here I can fill them in 6 hours; there it would take some days. When we take lumber it is put over the casks and I always filled up vessels with lumber; it is used there a great deal, and is an article of merchandize; I have sent vessels of 300 tons with nothing else; have sent 10,000 to 15,000 feet; when I was supercargo we would begin to windward to sell and then down coast; wind generally S.S.west, current S.SE.; cargo is landed by canoes when I was there, but I have sent out 2 or 3 surf boats for that purpose; we generally send spars and sometimes masts, to sell—always a large number. I have taken out 40,000 galls. of water sometimes.

Cross.

My business failed in 1857; not in business now; been partly out of business since 1857; done some since between Europe and New Orleans; I went to Europe and then to N. O.; loaded two vessels with camels, encouraged by gov'r, for Utah war; in '57 I was at 165 Pearl st.; I was comm'n merchant, on one ac., and owned 8 or 10 vessels at time; I was always alone, but in '57 I took Poiado and Hogan with firm; it was J. Machado & Co.; did business principally with Charles Hille, English merchant in Ceylon; Thos. Brown
82 & Co., of Candin; Isaacs, Ruder & Co., of Matagony, and with many others on smaller scales; sometimes sent vessels to slave coast to Sam'l Da Costa, and ware at Popoe & Whydoh, and twenty others; never sent vessels to Congo river; I think a bark of mine went up to Congo river; have sent vessels to Ambig, and have been there; American citizen, born in Western Island, Portuguese descent; bought here from Wm. Agnew & Co.; Figaniere sometimes had transactions very limited with Spanish houses; bought wine from Francia; never fitted vessels for any house here for Africa; had vessels consigned to me from Havana—from Mora; two-thirds of vessels sent from here were on one ac., rest to houses I have mentioned; I used to charter 10 or 15 vessels—sch'r Flying Eagle and many others;

authorities have seized vessels I have sent to Africa—George H. Tonnsand; she was on Long Island, chartered by me; was detained here 8 days; I would not bond her, and dist. att'y let her go without; brig Zero also was seized and detained only 6 or 8 hours; had two vessels seized on coast of Africa, Thos. Watson with 70,000 galls.
83 of palm oil; bark Lucerne in Gambia; both by English. Watson was dismissed by officer and officer dismissed; collector had seized another vessel with casks, and Lucerne was released; had no others seized here or in Africa; perhaps Flying Eagle seized by Portuguese at Benguela; she was released after few hours; sometimes my vessels returned to Europe; never lost but one ship—and she never was heard of; don't remember name; Capt. was named Brown; all the casks in ground tier were filled with water for ballast; once sent brig Favorita full of casks of fresh water; iron pots would hold, mounted on a stove, from 20 to 80 gallons, with pipe behind; could be put aboard as well as on land; could cook rice or beef in them; have seen sometimes at Sierra Leone 20 at time, with or without slaves; generally they cook food in copper boilers with zinc inside; they are mounted in brick over them cooking stove; ground tier of casks they had, and sometimes deck and sometimes not; could use sails for slaves to rest on; sleepers laid across and boards lengthwise; small vessels had sails for slaves to rest upon and large ones with floors;
84 generally slavers are prepared with double deck; was on coast in '52 last; habit in the same, I think; vessel might go from here with cargo of rum and bring back slaves; we use lime on our vessels and I always sent it; never saw Erie or Kibby; whitewash would be bad for slaves' eyes; I know Ross; have seen José Fernandez; never had dealings with either of them; I was subpœnaed this morning: I arrived here yesterday; don't know Charles P. Lake; have been witness before in slave cases; can't say what vessels; know houses here in African trade; many persons outside not connected with coast trade now except debts uncollected; in filling casks with water they are less apt to leak, and coopers on coast are very slow; have had vessels to go to Cape Palmas as a voyage and back—generally 9 or 12 mo's, sometimes 15; we begin at Cape Palmas to sell; and take oil on board coming back, and object of water is for ballast, and I always preferred fresh to salt water; casks differ in size, so can't say what these casks would hold; $1 for 3 galls. of oil; often return cargo paid for outward cargo; if sold cargo well, we bought gold
85 dust or bills on England; if cargo sold less than inward cargo would cost, got oil; generally preferred oil to anything else: sometimes bring nuts, gum, ivory; sometimes sent vessels to France from Africa; our intention was generally to get produce in exchange for our cargo: can't say if vessels that I have known coming out as legal traders have brought slaves; few American vessels were in that trade; vessels that went for slaves went for nothing else, and fitted out for that purpose; no cargo but stores for slaves—generally no rum; slaves are bought with English goods generally; rum not used often; most of slaves imported are born slaves and sold by owners from interior; don't think they use lights generally to stow negroes,

as light might be seen by men-of-war; on slavers all lights are excluded; they would not use light at night; on small vessels negroes sleep on deck; vinegar is cheap here; don't know if slaves use it; I have sent it and drugs; no connection with this.

Redi ect.

Vessel that was lost was George Estel; had Benedict's Nos.

Edward Smalley sworn: Stevedore and rigger; live here; been in business 10 or 12 years; have seen casks on board Kate; I
86 stowed her; have discharged vessels from coast often; discharged palm oil often; casks on Kate were the same as palm-oil casks; nothing peculiar in storage of Kate.

Cross.

Stowed her in July; think Sands employed me to stow her; South st., between Pike and Rutger's slip; Sands paid me for it; I am foreman. I stowed Maraquita, not Kibby or Achorn; Sands employed me for her; stowed sch'r Josephine; Sands employed me and paid me, not Cora. I bent Charlotte E. Tay's sails. I was hired on dock; did not stow Braman and others; vessels I loaded laid at different places; don't know Sands's first name; I am good hand at loading vessels; $2 per day; saw Otto; don't know Da Costa, or Ross, or Lake; was not on Magnolia or Yankee; was on Kate that day, clearing up decks. It is general rule to do that in this city; 4 of my gang were on board Kate; did not know where she was going; was not near Otto; did not know it was he till H't Lane brought him np.

Wm. H. Bush sworn: Keep restaurant; knows Raven; boarded with me when went on board; know Otto; was on Magnolia
87 when Kate was seized; Otto asked me to go to take air. It is not unusual for me to go on tugs; have been to sea 14 y'rs; have been in habit of seeing vessels, and keeps mates in his house to ship; saw Kate and spare spars; had no unusual rig about her.

Cross.

Did not examine what quantity of spars she had; took no notice. I have seen Sands; first name Joe; don't know where he lives; don't know Da Costa, saw man that Faunce called Da Costa; 1st time I ever saw him; boarded none of Braman people, or Erie, or Maraquita, &c. Otto boarded with me after got out of prison; don't know where he is now; don't know Lake, Ross, &c.: don't know why vessel was going away; Kibby laid in front of my door; that is all I know; did not talk with Otto going down; saw him on deck, not near pilot-house; did not see Da Costa till returned.

Frank Stevens sworn: 2d mate of Kate; followed sea 14 y'rs; went

on board day she started; I went to vessel, and asked capt. to give me chance; he said yes; I had not known him before; $30 per month; it is usual wages; I have had same before; had no intimation that she was going for slaves; capt. s'd he was going for trading voyage;
88 had no agreement that I was to get more than $30 per month; have seen vessels stowed, and helped to stow them; saw Kate when she was broke out; it was proper way to stow her.

Cross.

Portuguese; name in language, Francis Stevo; citizen, naturalized; last papers got 2 or 3 mo's ago; had first papers ten y'rs ago. Otto did not ask questions; vessel laid at Atlantic dock; I asked where she was going, and s'd she was going on trading voyage. I boarded then at Jarredos, Williams's house, he Portuguese, 108½ Cherry st.; they did not know Otto; I think I go all over to see shipmates; I went on Amanda that day to see friend. Otto had never seen me before, nor I the vessel; never was on the coast of Africa; never saw vessel stowed for coast. Otto s'd since, if you wish to go you can a second time. If I can get a chance I will go again, if on shore. Stockbridge shipped me; I don't know if I will go on her again.

Henry C. Smith recalled: Had nothing to do with Kate before bill of sale was lodged. (Bill of sale produced, 33.) I was employed on that day for nothing else but to arrange about this. Bill of sale recorded on 30th May; was not spoken to by Otto or Lake at
89 any time till she came to clear. On the 3d July, prepared 2 manifests—that all; went with manifests to custom-house. Owner and capt. must make oath; had nothing else to do but to present to clerk, and ask his check on it. Neither Otto or Lake ever said she was going slaving, nor authorized me to make such statement, or to arrange with De Graw or any other person; gave De Graw no $20 on that day, the day Josephine cleared. In early part of May he did get money from me; borrowed it of me to pay rent; he said he got $50. De Graw (objected to) is in habit of borrowing from brokers constantly Did not enter her on inward voyage.

Cross.

I cleared Josephine about middle of May; before that I lent De Graw $50 in 2 $20 gold pieces and $10 gold piece; generally have more gold than bills. It was between 11 and 3; can't say nearer; was in his office; he was at desk when asked me; can't say who was present. I was entering or clearing vessel, or getting storage; can't say which one. He gave me no one bill. I lent him money for facilities he gave me at desk. I have not confidence in him. He has never paid me back from 6 cts. up. This money is borrowed not to be returned. Facilities are that he w'd pass to the
90 clerk that should check before him, and take my papers before others. He only puts a check on after it is done by others.

Never paid money for any one facility, but for general. It was no object to me to have Josephine go without being reported. This is outward cargo of Josephine. I have never offered McGraw money to keep vessels from being reported. I asked McGraw once if he had reported vessels, and how much he made. He s'd he had made nothing yet, but would make if he could. Did not tell him he could make something. Don't think I ever said I was going to Battery to see Kate. Don't remember clearing Achorn. I think I cleared the Kibby. Schr. Maraquita, my regular customers own her; Lima Vienne owns her. Did not clear Erie or Falmouth, nor bark Cora; think I cleared Tay. (Ruled out.)

Applied to clear Kate 2d time; was refused. Never told McGraw that I was about to clear slaver; swears positively to this. Signed crew bond and register bond. Did not draw bill of sale; date is on back of it. Not seen Otto since; may have seen Lake; don't know if he is well known.

It is admitted that marshal ordered the trunks taken on Kate on order of Capt. Otto. Dist. att'y to put in, subject to obj'n, recognizance of Otto. (Marked 32.)

Testimony closed.

91 *Exhibit A, C. W. N.*

[SEAL.] *The people of the State of New York to Captain John Faunce, and to the person or persons in charge of the bark Kate.*

We command you that you have the body of John Garcia, or by whatsoever name he be known, by you detained and imprisoned, as is said, together with the cause of his detention or imprisonment, before Hon. Abraham D. Russell, our city judge of the city of New York, at his office, No. 130 Nassau street, in the city of New York, on the fourth day of July inst., at 10½ o'clock in the afternoon, then and there to be delt with according to law. And have you then there this writ.

Witness Hon. Josiah Southerland, justice of our supreme court, at the city of New York, the fourth day of July, 1860.

By the court.

JOHN CLANCY, *Clerk.*

BEEBE, DEAN & DONOHUE, *Attorneys.*

92 Endorsed: In the matter of the application to bring up the body of John Garcia. Habeas corpus. Beebe, Dean & Donohue, att'ys. Allowed July 4, 1860. A. D. Russell, city judge.

93 *Exhibit B, J. L. C.*

To the honorable Abraham D. Russell, city judge, New York.

The application of Robert McCormick respectfully shows, that John Garcia is illegally imprisoned and restrained of his liberty by Capt. Faunce and the person in charge of the bark Kate; that he

is not so imprisoned by virtue of the sentence or decree of any court of competent jurisdiction, nor is he so committed or restrained by virtue of any process, or final decree, or proceeding in any court of the United States, or any judge thereof; that the alleged cause of his imprisonment and restraint is that he was in some way connected with the bark Kate; that said allegation is wholly untrue, and that he has no connection therewith.

Wherefore petitioner prays that a writ of habeas corpus may issue to bring up the body of the said prisoner, together with the cause of his detention, to be dealt with according to law.

ROBERT McCORMICK.

CITY AND COUNTY OF NEW YORK, *ss:*

Robert McCormick being duly sworn, says that the pro-
94 ceeding petition is true to the best of his knowledge and belief.

ROB'T McCORMICK.

Sworn to before me this 4th day of July, 1860.

A. D. RUSSELL, *City Judge.*

Endorsed: The People ex iel. *vs.* Capt. Faunce, &c., &c. Application pr. hab. corp. Exhibit B.

95 *Exhibit C, J. L. C.*

[SEAL.] *The people of the State of New York to Capt. John Faunce, and to the person or persons in charge of the bark Kate.*

We command you that you have the body of John Garcia, or by whatsoever name he may be known, by you detained and imprisoned, as is said, together with the cause of his detention or imprisonment, before Hon. Abraham D. Russell, our city judge of the city of New York, at his office, No. 130 Nassau street, in the city of New York, on the fifth day of July inst., at 10½ o'clock in the forenoon, then and there to be dealt with according to law. And have you then there this writ.

Witness Hon. Josiah Southerland, justice of our supreme court of the city of New York, the fourth day of July, 1860.

JNO. CLANCY.

BEEBE, DEAN & DONOHUE, *Attorneys.*

Endorsed: Allowed July 4, 1860. A. D. Russell, city
96 judge. Exhibit C, J. L. C.

Exhibit A, J. L. C.

Prisoner is remanded to the custody of Deputy Sheriff Woolridge, by him to be produced at the adjournment of this case, on the 6th day of July inst., at 10 o'clock, at the court of general sessions room, near city hall, N. Y.

July 5th, 1860. A. D. RUSSEL.

Prisoner is transfered to custody W. B. Marshall, to be produced before me as above.

N. Y., July 5th, 1860.

A. D. RUSSEL, *City Judge.*

Let John Garcia be discharged from the custody of John Faunce.

N. Y., July 6th, 1860.

A. D. RUSSELS, *City Judge.*

97 *Exhibit D.*

U. S. district court.

UNITED STATES
vs.
HENRICO DE COSTA.

SOUTHERN DIST. OF NEW YORK, *ss:*

George P. Andrews, being duly sworn, deposes and says, that one Henrico de Costa was on the 12th day of July, 1856, arrested by the marshal of said district by virtue of a warrant issued out of this court.

That afterwards while the said Henrico de Costa was held by the said marshal, under and by virtue of said warrant, the said Henrico de Costa, as this deponent is informed and believes, escaped from the custody of said marshal; that the said Henrico de Costa is now at large; that there is now pending against him, the said Costa, in this court, an indictment for fitting out the brig Braman, under which the former warrant of arrest had issued, to engage in the slave trade. That he, the said Costa, is not under any bonds for his appearance in court to answer to said indictment.

Whereupon this deponent prays that the said Henrico de
98 Costa may be arrested and brought before the court to give bonds for his appearance, and in default thereof may be committed into custody. G. P. ANDREWS.

Subscribed and sworn to before me this 5th day of July, 1860.

JOSEPH BRIDGHAM,
U. S. Comm.

IN OPEN COURT, JULY 5TH, 1860.

Ordered, That the clerk issue an alias warrant of arrest against the above named defendant upon the above indictment, returnable in this court at the next term thereof.

SAM. R. BETTS.

Endorsed: U. S. dist. court. The United States *vs.* Henrico de Costa. Warrant of arrest. Exhibit D. Filed July 5, 1860.

99

Exhibit E.

To the marshal of the United States for the southern district of N. Y., and to his deputies, or any or either of them.

Whereas at a district court of the United States of America for the southern district of New York, began and held at the city of New York, within and for the district aforesaid, on the first Tuesday of July, in the year of our Lord one thousand eight hundred and fifty-six, the grand jurors in and for the said district, brought into the said court a true bill of indictment against Henrico De Costa, for having on the ninth day of June, eighteen hundred and fifty-six, at the port of New York, as owner or factor, built, fitted, equipped, loaded, prepared, and sent away a certain vessel, being a brigantine, called the "Braman," for the purpose of procuring a large number, to wit: 500 persons of color, mulattoes, or negroes, to be transported to a certain place, to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor against the peace of the United States, and their dignity, as by the said indictment, now remaining on file and of record in the said court, may more fully appear; to which indictment the said Henrico De Costa has not yet appeared or pleaded, as we have before commanded you.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the
100 said Henrico De Costa, and him bring before the said court, at the city hall, in the city of New York, to answer the indictment aforesaid.

Witness honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York, at the city of New York, the fifth day of July, in the year of our Lord one thousand eight hundred and sixty.

J. J. ROOSEVELT, *U. S. Attorney.*
GEO. F. BETTS, *Clerk.*

I hereby depute Joseph Thompson, Robert Donnell, and Maurice O. Keep, or either, to execute the within writ.

Dated July 5th, '60.

ISAIAH RYNDERS, *U. S. Marshal.*

I return that I have the body of the within-named defendant in my custody.

July 6, 1860.

ISAIAH RYNDERS, *U. S. Marshal.*

The prisoner being brought before me in open court on the within warrant, it is ordered by the court that he be committed to the cus-

tody of the marshal until he give bail, with approved sureties, in the sum of $5,000, or be otherwise discharged by order of court.

SAMUEL R. BETTS.

July 6, 1860.

Discharged on recognizance in $5,000.

GEO. F. RETTS, *U. S. Comm.*

Sept. 18, 1860.

C. W. W.

Exhibit E. U. S. district court. The United States of America *vs.* Henrico De Costa. Bench warrant. J. J. Roosevelt, U. S. attorney.

101 *Report and manifest of the cargo laden at the port of New York, on board the bark Kate, Fred. Otto, master, bound for Cape Palmas, and leeward ports, W. C. of Africa.*

Mark.	Nos.	Packages and contents.	Quantities.	Value of domestic mchdse.	Value of foreign mdse.	To be landed at.
A. R	.....	One hundred pipes rum	100	.....	$3,800	Cape Palmas and leeward ports, W. C. Africa.
T	.....	Two hundred box herring	200	$60		
"	.....	Five cask codfish	3,350 lbs.	100		
R	.....	Twelve boxes cheese	131	20		
191 "	.....	Four barrels ale and cider	32	48		
"	.....	Six boxes wines or liquors	6	50		
"	....	Two baskets champagne	4	24		
T	.....	One hundred and ten half barrels rice	12,088 lbs.	570		
R	.....	Twelve box gin	12	60		
T	.....	Ten barrels beef	10	140		
"	.....	Five barrels pork	5	77		
"	....	Ten kegs lard	544 lbs.	82		
R	.....	Six half barrels family beef	6	60		
"	.....	One barrel hams	178 lbs.	24		
192 "	.....	" " smoked beef	150	15		
T	.....	Six boxes cont'g iron pots	2,432	243		
"	....	Thirty iron pots	450	32		
"	.....	One hundred pails	100	18		
R	.....	Two boxes a la mode beef	2	19		
T	.....	Eighty-two water casks, for oil	82	522		
"	.....	Six bales hoop iron	6	14		
R	.....	Two bags nuts	70 lbs.			
"	.....	One barrel salmon	1	19		
"	.....	Two tins biscuit	38 lbs.	4		
T	.....	Eighty barrels navy bread	8,383	294		
"	.....	Twenty tins crackers	240	12		
193 R	.....	Three barrels vinegar	3	15		
"	.....	One keg sausages	100	15		
R C	.....	Eight boxes drugs and medicines	8	282		
"	.....	One keg ..... do.	1			
	.....	Five thousand feet lumber	5,000 feet.	90		
R	.....	Twelve boxes French cognac	12	96		
"	....	Twelve do. cordials	12	98		
"	.....	Twenty-five boxes vegetables	27	212		
"	.....	Two boxes jelly				
T	.....	Forty half barrels flour	40 bbls.	140		
"	.....	Fifteen boxes soap	375 lbs.	27		
194 "	....	Ten do. candles	300	90		

I certify this to be a true copy of manifest on file in this office.
[SEAL.]

DISTRICT AND PORT OF NEW YORK, *Collector's Office, July 3, 1860.*

H. A. CARGILL, *D. P. Collector.*

102 I, Charles W. Buck, do solemnly, sincerely, and truly swear that the report and manifest subscribed in my name, and now delivered by me to the collector of the district of New York, contains, to the best of my knowledge and belief, a just and true account of all the goods, wares, and merchandise, including packages of every kind and nature whatsoever, which were on board the bark Kate at the time of her sailing from the port of Havana, or which have been laden or taken on board at any time since, and that the packages of the said goods are as particularly described as in the bills of lading signed for the same by me or with my knowledge; that I am at present, and have been during the voyage, master of the said vessel; that no package whatsoever, or any goods, wares, or merchandise, have been unladen, landed, taken out, or in any manner whatever removed from on board the said bk. since her departure from the said port of Havana, except such as are now particularly specified and declared in the abstract account herewith, and that the clearance and other papers now delivered by me to the collector are all that I now have, or have had, that any way relate to the cargo of the said vessel. And I do further swear that the several articles specified in the said manifest as the sea stores for the cabin and vessel are truly such, and were *bona fide* put on board the said bk. for the use of the officers, crew, and passengers thereof, and have none of them been brought, and are not intended by way of merchandise, or for sale, or for any other purpose than above mentioned, and are intended to remain on board for the consumption of the said officers and crew. I further swear that, if I shall hereafter discover or know of any other or greater quantity of goods, wares, and merchandise, of any nature or kind whatsoever, than are contained in the report and manifest subscribed and now delivered by me, I will immediately, and without delay, make due report thereof to the collector of the port and district of New York. And I do likewise swear that all matters whatsoever in the said report and manifest expressed, are, to the best of my knowledge and belief, just and true. I further swear that an officer of the customs has applied for an inspection of the manifest of the cargo on board the said vessel, and that a certificate of endorsement has been delivered to me on the manifest of such cargo.

I do further, as required by law, solemnly swear that I have, to the best of my knowledge or belief, delivered or caused to be delivered into the post office of this port, every letter and every bag, parcel, or package of letters that were on board the said vessel during her last voyage, and that I have so delivered or caused to be delivered all such letters, bags, parcels, and packages as were in my possession, or under my power or control.

I further swear that the register of the said bk., herewith presented, contains the names of all the persons who are now owners thereof, and that no foreign subject or citizen hath, to the best of my kowledge and belief, any share, by the way of trust, confidence, or otherwise, in the said bk. I further swear that no part of the crew of the said vessel has been impressed or detained in the course of the last voy-

age by any foreign power. I further swear that the said vessel sailed from the said port on the 8th May, 1860, so help me God.

CHAS. W. BUCK.

Sworn before me this 17th day of May, 1860.

D. MEAD, *Collector.*

IMPORT MANIFEST No. 2.

MANIFEST OF THE CARGO OF A VESSEL ARRIVING FROM A FOREIGN PORT.

Report and manifest of the cargo laden on board of the bark Kate, of Baltimore, whereof Chas. W. Buck is master, which cargo was taken on board at Havana; burthen 267 1/95 tons, built at Baltimore, in the State of Maryland, and owned by Benj'n C. Buck and Alfred Buck, merchants at Baltimore, as per register granted at Baltimore, the 13th Feb'y, 1854, and bound for New York.

Marks.	Numbers.	Packages and contents.	By whom shipped.	To whom consigned.	Place of consignee's residence.	Port of destination.
A R	1 C 150	One hundred and fifty pipes of rum	Jr. Lavandeira	Antonio Ross	New York	New York.
"		Ten half pipes of wine	do	do	"	"
"		Twenty quarter pipes of wine	do	do	"	"
"		Four hogsheads old copper	do	do	"	"
"		Seven pieces old copper	do	do	"	"
J L 200		One case cigars	Canala, Landrany & Co	Order	"	"
J L		One case sweetmeats	do	do	"	"
[R]	1 D 54	Fifty-four boxes sugar				
[R] A	55-149	Ninety-five boxes sugar				
[R] B	1-93	Ninety-three boxes sugar	La Rue, Dominguez & Co	Robert & Williams		
[R] C	1-8	Eight boxes sugar				
[R] D	1-98	Ninety-eight boxes sugar				
[R] E	1-37	Thirty-seven boxes sugar				
A R 201	1-2	Two boxes merchandize	Jr. Lavendeira	A. Ross		

CHAS. W. BUCK.

NEW YORK, *June* 30, 1860.

To the collectors of the port of New York:

I hereby certify that I am satisfied with the delivery of the cargo of the bark Kate, from Havana, and have not any claim for short delivery.

Yours, respectfully, ANTO. M. ROS. J. W., F. W. C.

103 DISTRICT OF NEW YORK,
Port of New York:

——— day of ———, 1860, I, Charles W. Buck, master of the bark Kate, of Baltimore, from Havana, do solemnly, sincerely, and truly swear that I have deposited in the post office at this port, all letters directed to any person or persons within the United States, which are brought in the said bark under my care or within my power.

Sworn to before me.

CHARLES W. BUCK, *Collector.*

DISTRICT OF NEW YORK :

I, Charles W. Buck, do solemnly, sincerely, and truly swear that the report and manifest subscribed with my name, and now delivered by me to the collector of the district of New York, contains, to the best of my knowledge and belief, a just and true account of all the goods, wares, and merchandise, including packages of every kind and nature whatsoever, which were on board the bark Kate at the time of her sailing from the port of Havana, or which have been laden or taken on board at any port since, and that the packages of the said goods are as particularly described in the bills of lading signed for the same by me, or without my knowledge; that I am at present master of the said vessel; that no package whatsoever, or any goods, wares, or merchandise, have been unladen, landed, taken out, or in in any manner whatever removed from on board the said bark since her departure from the said port of Havana, except such as are now particularly specified and declared in the abstract or account herewith, and that the clearance and other papers now delivered by me to the collector are all that I now have, or have had, that any way relate to the cargo of the said vessel. And I do further swear that the several articles specified in the said manifest as the sea stores for the cabin and vessel, are truly such, and were *bona fide* put on board the said bark for the use of the officers, crew, and passengers thereof, and have none of them been brought, and are not intended by way of merchandise, or for sale, or for any other purpose than above mentioned, and are intended to remain on board for the consumption of the said officers and crew. I further swear that if I shall hereafter discover or know of any other or greater quantity of goods, wares, and merchandise of any nature or kind whatsoever than are contained in the report and manifest subscribed, and now delivered by me, I will immediately, and without delay, make due report thereof to the collector of the port of New York. And I do likewise swear that all matters whatsoever in the said report and manifest expressed, are, to the best of my knowledge and belief, true. I further swear that there are not to the best of my knowledge and belief on board of bark Kate any goods or merchandise the importation of which into the United States, or territories thereof, is prohibited by law. And I do further swear that if I shall hereafter discover or know of any such goods, wares, or merchandise on board said vessel, or which

shall have been imported in the same, I will immediately, and without delay, make due report thereof to the collector of the port of this district. CHAS. W. BUCK.

Sworn before me this of , 186 .

———— ————, *Collector.*

I, Charles W. Buck, of Baltimore, in the State of Maryland, master of the ship or vessel called the Kate, do swear that according to the best of my knowledge and belief, the register of the said bark now produced to the collector of the customs for the district of Baltimore, contains the names of all the persons who are owners thereof.

BENJAMIN C. BUCK.
ALFRED BUCK.

And that no further subject or citizen has, to the best of my knowledge and belief, any share by way of trust, confidence, or otherwise in the said ship or vessel, so help me God.

CHAS. W. BUCK.

103½ DISTRICT AND PORT OF NEW YORK:

I, , certify that the within manifest was this day presented to me as the original manifest of the cargo on board the , of , master, from .

In witness whereof, I have hereunto set my hand this day of , 186 .

PORT OF NEW YORK:

I, John C. Roach, certify that the within manifest was produced to me this day as the original manifest of the cargo on board the bark Kate, whereof Buck is master, from Havana.

In witness whereof, I hereunto sign my name this 17th day of May, 1860.

JOHN C. ROACH, *Cl'k.*

Endorsed: Marked No. 2, J. L. C. Bark Kate. Inward manifest. Buck, Havana, May 17, 1860. Rob't Williams.

Duties: Orig'l	$1,830 48
Signed	1,765 68
Excess	64 80

Pd. May 19

R. L. ROSSITER, *D. W. C.*

104 UNITED STATES OF AMERICA:

It is agreed between the master and seamen or mariners of the bark Kate, of New York, whereof Otto is at present master, or whoever shall go for master, now bound from the port of New York to Cape Palmas, and a market, and back to a final port of discharge in the United States, and for a term of time not to exceed six calendar

months, and it is hereby expressly agreed, that should the said ship, on the said voyage, be seized, detained, or fined for smuggling tobacco, or any other article, by one or more of the undersigned sailors, cooks, or stewards, they shall all be responsible for the damages thus resulting, and shall severally forfeit their wages, and all their goods and chattels on board, to the amount of such damage, and that the certificate of the person or persons who may seize, detain, or fine the said ship for smuggling, signed by him or them, and verified by the American consul at , under his seal of office, shall be conclusive evidence of the facts therein stated, in all courts whatsoever, especially and as to the fact that smuggling had been committed, the individual or individuals by whom the same had been committed, the amount of the fine imposed therefor upon the said ship, the incidental expenses thereon, and the number of days the said ship was detained in consequence thereof. No grog allowed, and none to be put on board by the crew; and no profane language allowed, nor any sheath-knives permitted to be brought or used on board.

That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage. And the said master doth hereby agree with and hire the said seamen or mariners for the said voyage, at such monthly wages or prices to be paid pursuant to this agreement, and the laws of the Congress of the United States of America; and they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel on board any other vessel or be on shore, under any pretence whatsoever, until the above said voyage be ended, and the said vessel be discharged of her loading, without leave first obtained of the captain or commanding officer on board; that in default thereof he or they will be liable to all the penalties and forfeitures mentioned in the marine law, enacted for the government and regulation of seamen in the merchants' service, in which it is enacted, "that if any seaman or mariner shall absent himself from on board the ship or vessel, without leave of the master or officer commanding on board, and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of

the owner or owners of the said ship or vessel, and moreover shall be liable to pay him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place." And it is further agreed, that in case of desertion, death, or imprisonment, the wages are to cease. And it is further agreed, by both parties, that each and every lawful command which the said master or other officer shall think necessary hereafter to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, shall be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with everything belonging to him or them on board the said vessel. And it is further agreed on, that no officer or seamen belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of said vessel at the said vessel's final port of discharge, and her cargo delivered. And it is hereby further agreed, between the master, officers, and seamen of the said vessel, that whatever apparel, furniture, and stores each of them may receive into their charge, belonging to the said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged, through their carelessness or insufficiency, it shall be made good by such officer or seaman, by whose means it may happen, to the master and owners of the said vessel. And whereas, it is customary for the officers and seamen, while the vessel is in port, or while the cargo is delivering, to go on shore at night to sleep, greatly to the prejudice of such vessel and freighters, be it further agreed by the said parties, that neither officer nor seamen shall, on any pretence whatever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary to order relative to said vessel or cargo. And whereas it frequently happens that the owner or captain incurs expenses while in a foreign port, relative to the imprisonment of one or more of his officers or crew, or in the attendance of nurses, or in the payment of board on shore for the benefit of such person or persons, now it is understood and agreed by the parties hereunto, that all such expenditures as may be incurred by reason of the foregoing premises, shall be charged to and deducted out of the wages of any officer, or such one of the crew, by whose means or for whose benefit the same shall have been paid. And whereas it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the vessel's husband, or his representative, to see the same safely landed; that each seaman or mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no desertion, plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to the payment of the wages or hire that may become due to him pur-

to this agreement, as to their names is severally affixed and set

forth: *Provided, nevertheless,* That if any of the said crew disobey the orders of the said master, or other officer of the said vessel, or absent himself at any time without liberty, his wages due at the time of such disobedience or absence shall be forfeited; and in case such person or persons so forfeiting wages shall be reinstated or permitted to do further duty, it shall not do away with such forfeiture. It being understood and agreed by the said parties, that parol proof of the misconduct, absence, or desertion of any officer or any of the crew of said vessel may be given in evidence at any trial between the parties to this contract, any act, law, or usage to the contrary thereof notwithstanding.

In testimony whereof, and for the due performance of each and every of the above-mentioned articles and agreements, and acknowledgment of their being voluntarily, and without compulsion or any other clandestine means being used, agreed to and signed by us, we have each and every of us hereunto affixed our hands, the month and day against our names as hereunder written.

And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they will render themselves on board the said vessel on or before Tuesday the 3rd day of July, 1860, at 2 o'clock in the afternoon.

Date of entry.	Names.	Station.	Birthplace.	Age.	Height.		Wages per month.	Advance wages.
					Feet.	Inches.		
	O. J. N. Raven	Master Mate	New York	35	5	8	40 00	40 00
216	Francis Stevens	2nd mate	Louisiana	33	5	9	30 00	35 00
Not on new list	James B. Reed	Cook and steward	Maine	30	5	8	25 00	30 00
Not on new list	James Brooks	Cabin boy	New York	18	5	5	10 10	10 00
	Frank George	Seaman	New York	27	5	5	15 00	18 00
	Isaac Leverage	do.	Massachusetts	28	5	10	15 00	18 00
Not on new list	Charles Brooks	do.	New York	26	5	9	15 00	18 00
	Joseph Manual	do.	New York	26	5	8	15 00	18 00
	Francis Antonio	do.	Massachusetts	29	5	8	15 00	18 00
	Martin Kent	do.	Louisiana	30	5	6	15 00	18 00
	Douglas Burness	do.	New York	23	5	10	15 00	18 00
	Thomas Pritchard	do.	Massachusetts	29	5	4	15 00	18 00
	Peter Lowerick	O'y do.	Massachusetts	20	5	6	13 00	13 00

I hereby certify the above to be a true copy of the original on file in this office.

DISTRICT AND PORT OF NEW YORK, *Collector's Office, July 3d, '60.*

H. A. CARGILL,
D. Collector.

An act for the government and regulation of seamen in the merchants' service, passed July 30, 1799.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of December next every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards bound from a port in one State to a port in any other than an adjoining State, shall, before he proceed on such voyage, make an agreement in writing, or in print, with every seaman or mariner on board such ship or vessel, (except such as shall be apprentice or servant to himself or owners,) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. And if any master or commander of such ship or vessel shall carry out any seaman or mariner, (except apprentices or servants as aforesaid,) without such contract or agreement being first made and signed by the seaman or mariner, such master or commander shall pay to every such seaman or mariner the highest price of wages which shall have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage, within three months next before the time of such shipping: *Provided* such seaman or mariner shall perform such voyage, or if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall moreover forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and such seaman or mariner, not having signed such contract, shall not be bound by the regulations, nor subject to the penalties and forfeitures contained in this act.

SECTION 2. *And be it enacted,* That at the foot of every such contract there shall be a memorandum in writing of the day and hour on which the seaman or mariner who shall ship and subscribe shall render themselves on board to begin the voyage agreed upon; and if any such seaman or mariner shall neglect to render himself on board the ship or vessel for which he was shipped at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel shall, on the day on which such neglect happened, make an entry in the log-book of such ship or vessel of the name of such seaman or mariner, and shall in like manner note the time that he so neglected to render himself, (after the time appointed,) every such seaman or mariner shall forfeit for every hour which he shall so neglect to render himself one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages; and if any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or, having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner, or consignee of the said ship or vessel a sum equal to that which shall have been paid to him by advance at the time of signing the contract, over and besides the sums so advanced, both

which sums shall be recoverable in any court, or before any justice or justices of any State, city, town, or county within the United States, which by the laws thereof have cognizance of debts of equal value against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed on the voyage.

SECTION 3. *And be it enacted*, That if the mate, or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to a foreign port, shall, after the voyage is begun, and before the ship or vessel shall have left the land, discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master or commander shall, upon the request of the said mate, (or other officer,) and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or if not, to some justice of the peace of the city, town, or place, taking with him two or more of the said crew who shall have made such request; and thereupon such judge or justice is hereby authorized and required to issue his precept, directed to three persons in the neighborhood, the most skilful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him, the said judge or justice, in writing under their hands, or the hands of two of them, whether in any or in what respect the said ship or vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the said judge or justice shall adjudge and determine, and shall endorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; if not, whether such repairs can be made, or deficiencies supplied, where the ship or vessel then lies, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted. And the master and crew shall in all things conform to the said judgment; and the master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed, or a fair copy thereof, certified by the said judge or justice; but if the complaint of the said crew shall appear upon the said report and judgment to have been without foundation, then the said master, or the owner or consignee of such ship or vessel, shall deduct the amount thereof and of reasonable damages for the detention, (to be ascertained by the said judge or justice,) out of the wages growing due to the complaining seamen or mariners. And if after such judgment such ship or vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations, as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any justice of the peace to commit by warrant, under his hand and seal, every such seaman or

mariner who shall so refuse to the common jail of the county, there to remain without bail or mainprize until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said justice, and inserted in the said warrant; and the surety or sureties of such seaman or mariner (in case he or they shall have given any) shall remain liable for such payment, nor shall any such seaman or mariner be discharged upon any writ of *habeas corpus*, or otherwise, until such sum be paid by him or them, or his or their sureties, for want of any form of commitment or other previous proceedings: *Provided*, That sufficient matter shall be made to appear upon the return of each *habeas corpus*, and an examination then be had, to detain him for the causes hereinbefore assigned.

SECTION 4. *And be it enacted*, That if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town, or county where he, she, or they may reside, shall forfeit and pay ten dollars for every day which he, she, or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar shall be recoverable from any seaman or mariner, by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended.

SECTION 5. *And be it enacted*, That if any seaman or mariner, who shall have subscribed such contract as is hereinbefore described, shall absent himself from on board the ship or vessel in which he shall have so shipped without leave of the master or officer commanding on board, and the mate or other officer having charge of the log-book shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place. And such damages shall be recovered with costs in any court, or before any justice or justices, having jurisdiction of the recovery of debts to the value of ten dollars or upwards.

SECTION 6. *And be it enacted*, That every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong one-third part of the wages which shall be due to him at every port where such ship or vessel shall unlade and deliver her cargo before the voyage is ended, unless the con-

trary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due according to his contract. And if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and the seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him to show cause why process should not issue against such ship or vessel, her tackle, furniture, and apparel, according to the course of admiralty courts, to answer for the said wages; and if the master shall neglect to appear, or appearing shall not show that the wages are paid or otherwise satisfied, or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty courts in such cases used. And in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall become incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matters in dispute, otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander. But nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or for immediate process out of any court having admiralty jurisdiction wherever any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

SECTION 7. *And be it enacted*, That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall at any port or place desert, or shall absent himself from such ship or vessel without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States (upon the complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common jail of the city, town, or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage,

or till the master shall require his discharge, and then to be delivered to the said master, he paying all the costs of such commitment, and deducting the same out of the wages due to such seaman or mariner.

SECTION 8. *And be it enacted*, That every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness at every port or place where such ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

SECTION 9. *And be it enacted*, That every ship or vessel belonging as aforesaid, bound on a voyage across the Atlantic ocean, shall at the time of leaving the last port from whence she sails have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship bread, for every person on board such ship or vessel, over and besides such other provisions, stores, and live stock, as shall by the master or passengers be put on board, and in proportion for shorter or longer voyages. And in case the crew of any ship or vessel, which shall not have been so provided, shall be put upon short allowance in water, flesh, or bread, during the voyage, the master or owner of such ship or vessel shall pay to each one of the crew one day's wages beyond the wages agreed on for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages.

An act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American seamen, passed February 28, 1803.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That before a clearance be granted to any vessel bound on a foreign voyage the master thereof shall deliver to the collector of the customs a list containing the names, places of birth, and residence, and a description of the persons who compose his ship's company, to which list the oath or affirmation of the captain shall be annexed that the said list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the said collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents. And the said

master shall moreover enter into bond, with sufficient security, in the sum of four hundred dollars, that he shall exhibit the aforesaid certified copy of the list to the first boarding officer at the first port in the United States at which he shall arrive at his return thereto, and then and there also produce the persons named therein to the said boarding officer, whose duty it shall be to examine the men with such list, and report the same to the collector. And it shall be the duty of the collector at the said port of arrival (where the same is different from the port from which the vessel originally sailed) to transmit a copy of the list so reported to him to the collector of the port from which said vessel originally sailed: *Provided*, That the said bond shall not be forfeited on account of the said master not producing to the first boarding officer as aforesaid any of the persons contained in the said list who may be discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, signified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew as aforesaid, or on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the collector.

SECTION 2. *And be it enacted*, That it shall be the duty of every master or commander of a ship or vessel belonging to citizens of the United States, who shall sail from any port of the United States after the first day of May next, on his arrival at a foreign port to deposit his register, sea-letter, and Mediterranean passport with the consul, vice-consul, or commercial agent, or vice-commercial agent, (if any there be at such port.) And in case of refusal or neglect of the said master or commander to deposit the said papers as aforesaid he shall forfeit and pay five hundred dollars, to be recovered by the said consul, vice-consul, commercial agent, or vice-commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction. And it shall be the duty of such consul, vice-consul, commercial agent, or vice-commercial agent, on such master or commander producing to him a clearance from the proper officer of the port where his ship or vessel may be, to deliver to the said master or commander all of his said papers: *Provided* such master or commander shall have complied with the provisions contained in this act, and those of the act to which this is a supplement.

SECTION 3. *And be it further enacted*, That whenever a ship or vessel belonging to a citizen of the United States shall be sold in a foreign country, and her company discharged, or when a seaman or mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to produce to the consul, vice-consul, commercial agent, or vice-commercial agent, the list of his ship's company, certified as aforesaid, and to pay to such consul, vice-consul, commercial agent, or vice-commercial agent, for every seaman or mariner so discharged, being designated on such list as a citizen of the United States, three months' pay over and above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul or

commercial agent to each seaman or mariner so discharged upon his engagement on board of any vessel to return to the United States, and the other remaining third to be retained for the purpose of creating a fund for the payment of the passages of seamen or mariners, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute, and may be in such foreign port. And the several sums retained for such fund shall be accounted for with the treasury every six months by the persons receiving the same.

SECTION 4. *And be it further enacted*, That it shall be the duty of the consuls, vice-consuls, commercial agents, and vice-commercial agents of the United States from time to time to provide for the mariners and seamen of the United States who may be found destitute within their districts, respectively, sufficient subsistence and passage to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give; and that all masters and commanders of vessels belonging to citizens of the United States, and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board their ships or vessels at the request of the said consuls, vice-consuls, commercial agents, or vice-commercial agents, respectively, and to transport them to the port in the United States to which such ships or vessels may be bound, on such terms, not exceeding ten dollars for each person, as may be agreed between the said master and consul or commercial agent; and the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several abilities: *Provided*, That no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every one hundred tons burthen of the said ship or vessel on any one voyage. And if any such captain or master shall refuse the same on the request or order of the consul, vice-consul, commercial agent, or vice-commercial agent, such captain or master shall forfeit and pay the sum of one hundred dollars for each mariner or seaman so refused, to be recovered for the benefit of the United States in any court of competent jurisdiction. And the certificate of any such consul or commercial agent, given under his hand and official seal, shall be *prima facie* evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty aforesaid.

SECTION 5. *And be it further enacted*, That the seventh and eighth sections of the act entitled "An act concerning consuls and vice-consuls" be, and the same are hereby repealed; and that the Secretary of State be authorized to reimburse the consuls, vice-consuls, commercial agents, or vice-commercial agents, such reasonable sums as they may heretofore have advanced for the relief of seamen, though the same should exceed the rate of twelve cents a man per diem.

SECTION 6. *And be it further enacted*, That it shall and may be lawful for every consul, vice-consul, commercial agent, or vice-commercial agent of the United States to take and receive for every certificate of discharge of any seaman or mariner in a foreign port fifty cents, and for commission on paying and receiving the amount of

wages payable on the discharge of seamen in foreign ports two and a half per centum.

SECTION 7. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent shall falsely and knowingly certify that property belonging to foreigners is property belonging to citizens of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for any term not exceeding three years.

SECTION 8. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent shall grant a passport or other paper certifying that any alien, knowing him or her to be such, is a citizen of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding one thousand dollars.

SECTION 9. *And be it further enacted*, That all powers of attorney executed after the thirtieth day of June next, in a foreign country, for the transfer of any stock of the United States, or for the receipt of interest thereon, shall be verified by the certificate and seal of a consul, vice-consul, commercial agent, or vice-commercial agent, if any there be at the place where the same shall be executed, for which the person giving the certificate shall receive fifty cents.

An act in addition to several acts regulating the shipment and discharge of seamen, and the duties of consuls, passed July 20, 1840.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, as follows:

1. The duplicate list of the crew of any vessel bound on a foreign voyage, made out pursuant to the act of Feb. 28, 1803, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

2. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made a true and certified copy of the shipping articles, which shall be written in a uniform hand, without erasure or interlineations, which shall be duly certified as authentic, and containing all the names of the crew borne on the list above named.

3. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

4. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes, and the provisions of the law which guard the rights of mariners.

5. Any consul of the United States, and in case there is none resi-

dent at a foreign port, or he is unable to discharge his duties, then any commercial agent of the United States authorized to perform such duties, may, upon the application of both the master and any mariner of the vessel under his command, discharge such mariner if he thinks it expedient, without requiring the payment of three months' wages under the provisions of the act of 28th February, 1803, or any other sum of money.

6. Any consul or commercial agent may also, on such joint application, discharge any mariner on such terms as will, in his judgment, save the United States from the liability to support such mariner, if the master gives his voluntary assent to such terms, and conform thereto.

7. When a mariner is so discharged the officer discharging him shall make an official entry thereof upon the list of the crew and the shipping articles.

8. Whenever any master shall ship a mariner in a foreign port he shall forthwith take the list of his crew and the duplicate of the shipping articles to the consul, or person who discharges the duties of the office at that port, who shall make the proper entries thereon, setting forth the contract and describing the person of the mariner, and thereupon the bond originally given for the return of the men shall embrace each person shipped.

9. When any mariner shall complain that the voyage is continued contrary to his agreement, or that he has fulfilled his contract, the consul, or other commercial agent performing like duties, may examine into the same by an inspection of the articles of agreement; and if on the face of them he finds the complaint to be well founded, he shall discharge the mariner, if he desires it, and require of the master an advance beyond the lawful claims of such mariner of three months' wages, as provided in the act of February twenty-eight, eighteen hundred and three. And in case the lawful claims of such mariner are not paid upon his discharge, the arrears shall from that time bear an interest of twenty per centum: *Provided, however*, If the consul or other commercial agent shall be satisfied the contract has expired, or the voyage been protracted, by circumstances beyond the control of the master, and without any design on his part to violate the articles of shipment, then he may, if he deems it just, discharge the mariner without exacting the three months' additional pay.

10. All shipments of seamen made contrary to the provisions of this and other acts of Congress shall be void, and any seaman so shipped may leave the service at any time; and demand the highest rate of wages paid to any seaman shipped for the voyage, or the sum agreed to be given him at his shipment.

11. It shall be the duty of consuls and commercial agents to reclaim deserters, and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner.

12. If the first officer, or any officer, and the majority of the crew of any vessel shall make complaint in writing that she is in an un-

suitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been during the voyage, sufficient and wholesome, thereupon, in any or like cases, the consul, or commercial agent who may discharge any duties of a consul, shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall in their report state what defects and deficiencies, if any, they find to be well founded, as well as what, in their judgment, ought to be done to put the vessel in order for the continuance of the voyage.

13. The inspectors so appointed shall have full power to examine the vessel, and whatever is on board of her, as far as is pertinent to their inquiry, and also to hear and receive any other proofs which the end of justice may require; and if, upon a view of the whole proceedings, the consul or other commercial agent shall be satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval, and if he dissents, shall also certify his reason for so dissenting.

14. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consul or other commercial agent approves of such finding, he shall discharge such of the crew as require it, each of whom shall be entitled to three months' pay in addition to his wages to the time of his discharge; but if, in the opinion of the inspector, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall in reasonable time remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; otherwise they shall, upon their request, be discharged, and receive each one month's wages in addition to the pay up to the time of discharge.

15. The master shall pay all such reasonable charges in the premises as shall be officially certified to him under the hand of the consul or other commercial agent; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul or other commercial agent directing the inquiry may officially certify.

16. The crew of any vessel shall have the fullest liberty to lay their complaints before the consul or commercial agent in any foreign port, and shall in no respect be restrained or hindered therein by the master or any officer, unless some sufficient and valid objection exists against their landing; in which case, if any mariner desire to see the consul or commercial agent, it shall be the duty of the master to acquaint him with it forthwith, stating the reason why the mariner is not permitted to land, and that he is desired to come on board;

whereupon it shall be the duty of such consul or commercial agent to repair on board and inquire into the causes of complaint, and to proceed thereon as this act directs.

17. In all cases where deserters are apprehended the consul or commercial agent shall inquire into the facts, and if satisfied that the desertion was caused by unusual or cruel treatment the mariner shall be discharged, and receive, in addition to his wages to the time of the discharge, three months' pay; and the officer discharging him shall enter upon the crew list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and subscribe his name thereto officially.

18. If any consul or commercial agent shall neglect or omit to perform seasonably the duties hereby imposed upon him, or shall be guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby, and for all malversation and corrupt conduct in office he shall be liable to indictment, and on conviction by any court of competent jurisdiction shall be fined not less than one nor more than ten thousand dollars, and be imprisoned not less than one nor more than five years.

19. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this act, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby, in damages, and shall, in addition thereto, be liable to pay a fine of one hundred dollars for each and every offence, to be recovered by any person suing therefor in any court of the United States in the district where such delinquent may reside or be found.

20. It shall be the duty of the boarding officer to report all violations of this act to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury, and to the attorney of the United States in his district.

An act in amendment of the acts for the punishment of offences against the United States, approved March 3, 1835.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any one or more of the crew of any American ship or vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, shall unlawfully, wilfully, and with force, or by fraud, threats, or other intimidations, usurp the command of such ship or vessel from the master or other lawful commanding officer thereof, or deprive him of his authority and command on board thereof, or resist or prevent him in the free and lawful exercise thereof, or transfer such authority and command to any other person not lawfully entitled thereto, every such person so offending, his aiders or abettors, shall be deemed guilty of a revolt or mutiny and felony, and shall, on conviction thereof, be punished by fine not exceeding two thousand dollars, and by imprisonment and confinement to hard labor

not exceeding ten years, according to the nature and aggravation of the offence. And the offence of making a revolt in a ship which now is, under and in virtue of the eighth section of the act of Congress passed the thirteenth day of April, in the year of our Lord one thousand seven hundred and ninety, punishable as a capital offence, shall, from and after the passage of the present act, be no longer punishable as a capital offence, but shall be punished in the manner prescribed in the present act, and not otherwise.

SEC. 2. *And be it further enacted*, That if any one or more of the crew of any American ship or vessel on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States shall endeavor to make a revolt or mutiny on board such ship or vessel, or shall combine, conspire, or confederate with any other person or persons on board to make such revolt or mutiny, or shall solicit, incite, or stir up any other or others of the crew to disobey or resist the lawful orders of the master or other officer of such ship or vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust therein, or shall assemble with others in a tumultuous and mutinous manner, to make a riot on board thereof, or shall unlawfully confine the master or other commanding officer thereof, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.

SEC. 3. *And be it further enacted*, That if any master or other officer of any American ship or vessel on the high seas, or any other waters within the admiralty or maritime jurisdiction of the United States, shall, from malice, hatred, and revenge, and without justifiable cause, beat, wound, or imprison any one or more of the crew of such ship or vessel, or withhold from them suitable food or nourishment, or inflict upon them any cruel and unusual punishment, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both according to the nature and aggravation of the offence.

SEC. 4. *And be it further enacted*, That whenever any person indicted for any offence against the United States, whether capital or otherwise, shall upon his arraignment stand mute, or will not plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty, on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party shall plead not guilty, or such plea shall be entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury. And in all trials in capital cases, if the party indicted shall peremptorily challenge above the number of jurors allowed by law, such excess of challengers shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if the said challenges had not been made.

SEC. 5. *And be it further enacted*, That whenever any person shall be convicted of any offence against the United States which is punishable by fine and imprisonment, or by either, it shall be lawful for

the court by which the sentence is passed to order the sentence to be executed in any house of correction, or house of reformation for juvenile delinquents, within the State or district where such court is holden, the use of which shall be allowed and authorized by the legislature of the State for such purpose, and the expenses attendant upon the execution of such sentence shall be paid by the United States.

We, the undersigned, late mariners on board the on her late voyage, described on the other side of this instrument, and now performed to this place of payment, do hereby, each one for ourselves, with our signatures, acknowledge to have received of, agent or owner of said , the full sum hereunder set against our names; being in full amount of our wages for our services, and all demands for *assault and battery, or imprisonment*, of whatever name or nature, against said , her owners or officers, to the day or date hereunder set against our names.

Names.	Amount.	Amount in writing.	Place and date of payment.	Signatures and seals	Witness to signing.

105 No. 275.

In pursuance of an act of the Congress of the United States of America entitled "An act concerning the registering or recording of ships or vessels," Charles P. Lake, of Brooklyn, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the Kate, of New York, whereof Frederick Otto is at present master, and a citizen of the United States, and that the said ship or vessel was built at Baltimore, in the State of Maryland, in the year 1853, as per register, No. 30, issued at this port, March 10th, 1860, now cancelled, property changed; and said register having certified that the said ship or vessel has one deck, and three masts, and that her length is one hundred and fourteen feet six inches, her breadth twenty-six feet, her depth ten feet three inches, and that she measures two hundred and sixty-seven $\frac{11}{95}$ tons; that she is a bark, has an elliptic stem, no galleries, and a billet head; and the said Charles P. Lake having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this 30th day of May, in the year one thousand eight hundred and sixty.

F. BIGGER,
Register.

C. D. MEAD,
Deputy Collector.

N. T. ROSSITER,
Deputy Naval Officer.

106 Two hundred seventy-five.—Permanent.

Register of vessels.

UNITED STATES.

No. 275.—In pursuance of an act of the Congress of the United States of America entitled "An act concerning the registering and recording of ships or vessels," Charles P. Lake, of Brooklyn, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the Kate, of New York, whereof Frederick Otto is at present master, and is a citizen of the United States, and that the said ship or vessel was built in Baltimore, State of Maryland, in the year eighteen hundred fifty-three, as per register No. 30, issued at this port March 10th, 1860, now cancelled, property changed; and said register having certified that the said ship or vessel has one deck and three masts, and that her length is one hundred fourteen feet six inches, her breadth twenty-six feet, her depth ten feet three inches, and that she measures two hundred sixty-seven $\frac{4}{5}$ tons; that she is a bark, has an elliptic stem, no galleries, and a billet head; and the said Charles P. Lake having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York,
[SEAL.] this 30th day of May, in the year one thousand eight hundred and sixty.

F. BIGGER, *Register.*
C. D. MEAD, *Collector.*
N. T. ROSSITER,
Naval Officer.

107 No. 275.

PORT OF NEW YORK, *ss:*
District of the City of New York.

I, Charles P. Lake, of Brooklyn, State of New York, do solemnly swear, according to the best of my knowledge and belief, that the ship or vessel called the "Kate," of New York, is of the burthen of 267$\frac{4}{5}$ tons, and was built in Baltimore, in the State of Maryland, in the year 1855, as per register No. 30, issued at the port of Baltimore, March 10, 1860, now cancelled, property changed; that my present usual place of abode or residence is Brooklyn, and that I am a citizen of the United States, and the true and only owner of the said ship or vessel; and there is no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested therein, or in the profits or issues thereof, and that

Frederick Otto is the present master or commander of the said ship or vessel.

CHAS. P. LAKE.

Sworn to this 30th day of May, 1860.

J. S. BRIMEY, *Deputy Collector.*

Length.
Breadth.
Depth.

I, Frederick Otto, the present master of the above-mentioned vessel, do solemnly swear that I am a citizen of the United States, having been naturalized in New York, State of New York.

FREDERICK OTTO.

Sworn to this 2d day of July, 1860.

N. A. CARGILL, *D. C.*

108 Know all men by these presents that we, Chas. P. Lake, Frederick Otto, and H. C. Smith, are held and firmly bound to the United States of America in the full and just sum of sixteen hundred doll's, to which payment, well and truly to be made, we bind ourselves, executors, and administratrators, jointly and severally by these presents.

Witness our hands and seals this 30 of May, one thousand eight hundred and sixty.

The condition of the foregoing obligation is such, that whereas Augustus Schell, collector of the district of New York, has issued and granted a certificate of registry in the manner prescribed by the act entitled "An act concerning the registering and recording of ships and vessels," for the bark called the Kate, of New York, burthen 267 $\frac{11}{95}$ tons, whereof Otto is at present master, which certificate is dated this day, and numbered 275:

Now, therefore, if the said certificate of registry shall be solely used for the said vessel for which it has been granted, and shall not be sold, lent, or otherwise disposed of to any person or persons whomsoever, and in case the said vessel shall be lost, or taken by an enemy, burnt or broken up, or shall be otherwise prevented from returning to the port to which she belongs, if the said certificate (if preserved) shall within eight days after the arrival of the master or person having the charge or command of the said vessel, within any district of the United States, be delivered up to the collector of such dis-
109 trict; or if any foreigner, or any person or persons for the use and benefit of such foreigner, shall purchase or otherwise *or otherwise* become entitled to the whole, or any part or share of, or interest in the said vessel, the same being within a district of the United States, if the said certificate shall within seven days after such purchase, change or transfer of property, be delivered up to the collector of the said district; or if such purchase, change, or transfer of property shall happen when the said vessel shall be a

any foreign port or place, or at sea, if the master or person having the charge or command thereof shall within eight days after his arrival within any district of the United States, deliver up the said certificate to the collector of such district, then the said obligation shall be void and of no effect, but otherwise shall remain in full force and virtue.

CHAS. P. LAKE. [L. S.]
FREDERICK OTTO. [L. S.]
H. C. SMITH. [L. S.]

Signed, sealed, and delivered in the presence of—
S. P. INGRAHAM.

DISTRICT AND PORT OF NEW YORK:

I hereby certify the within to be a true copy of the original on record in this office.

Custom-house. Collector's office. SEAL. District of New York.

Given under my hand and seal this 17 Nov., 1860.

AUGUSTUS SCHELL,
Collector.

Endorsed: B'k Kate. Register oath and bond. Di. 2d July, 1860. Exh. No. 5. Marked No. 5. J. L. C.

Ex. No. 6.

List of persons composing the crew of the bark Kate, of New York, whereof Otto is master, bound for Cape Palmas and a market.

Names.	Place of birth.	Places of residence.	Of what country citizen or subject.	Aged.	Height.	Complexion.	Hair.
					Ft. In.		
O. F. N. Raven	New York.	New York.	United States...	25	5 8	Dark.	D'k brown.
Francis Stevens	Louisiana.	do.	do.	33	5 9	do.	Dark.
James A. Reed	Maine.	do.	do.	30	5 8	Light.	Brown.
James Brooks	New York.	do.	do.	18	5 5	do.	L't brown.
Frank George	New York.	do.	do.	27	5 5	Dark	Dark.
Isaac Leveridge	Mass.	do.	do.	28	5 10	do.	do.
Charles Brooks	New York.	do.	do.	26	5 9	Light.	Brown.
Joseph Maunell	New York	do.	do.	26	5 8	Dark.	Dark.
Francis Antonio	Mass.	do.	do.	29	5 8	do.	do.
Martin Kent	Louisiana.	do.	do.	30	5 6	Light.	Light.
Douglass Burness	New York.	do.	do.	23	5 10	do.	do.
Thomas Pritchard	Mass.	do.	do.	29	5 4	Dark.	Dark.
Peter Lowerick	Mass.	do.	do.	20	5 6	do.	do.

F. OTTO.

STATE of NEW YORK, *ss:*

I, John Edwards, public notary, do hereby certify, that on the day of the date hereof, before me personally came and appeared Otto, master and commander of the bark Kate, now about clearing out for Cape Palmas and a market, who being duly sworn, did sol-

emnly and sincerely declare that the above list contains the names of the officers and crew of the said bark, together with the places of their birth and residence, as far as he hath been able to ascertain the same.

[L. S.] Given under my hand and seal of office, at the city of New York, this third day of July, 1860.

JOHN EDWARDS,
Notary Public.

110 CITY OF NEW YORK, *ss:*

I, the undersigned notary public, do hereby certify that the within-named persons, who comprise the company of the within-mentioned bark, whereof Otto is at present master, having produced to me proof in the manner directed by the laws of the United States, I do certify that the several before-mentioned persons are all citizens of the United States.

In testimony whereof, I have hereunto affixed my name and seal of office the 3d day of July, 1860.

JOHN EDWARDS,
Notary Public.

Endorsed: Bark Kate. Cert. copy crew list. Ex. No. 6. Di. July 3, 1860. Marked No. 6. J. L. C. C. W. N.

111 No. 7.

Know all men by these presents that we, Frederick Otto, master or commander of the bark called the Kate, now lying in the district of New York, and H. C. Smith, are held and firmly bound unto the United States of America in the full and just sum of four hundred dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 3d day of July, in the year one thousand eight hundred and sixty.

Whereas the above-bounden master hath delivered to the collector of the customs for the district of New York, in the State of New York, a verified list, containing, as far as he can ascertain them, the names, places of birth, residence, and description of the persons who compose the company of the said bark, now lying in the said district, of which he is at present master or commander, of which list the said collector has delivered to the said certified copy:

Now, the condition of this obligation is such, that if the said master shall exhibit the aforesaid certified copy of the list to the first boarding officer at the first port in the United States in which he shall arrive on his return thereto, and then and there also produce the persons named therein to the said boarding officer, except any of the persons contained in the said list who may be discharged in a foreign

country, with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, signified in writing under his hand and official seal, to be produced to the collector of the district within which he may arrive, as aforesaid, with the other persons comprising the crew, as aforesaid, or who may have died or absconded, or who may have been forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the said last-mentioned collector, then and in such cases, the above obligation shall be void and of no effect; otherwise, it shall abide and remain in full force and virtue.

F. OTTO. [L. S.]
H. C. SMITH. [L. S.]

Sealed and delivered in the presesce of—
S. P. INGRAHAM.

112 No. 8.

DISTRICT AND PORT OF NEW YORK:

These are to certify, all whom it doth concern, that F. Otto, master or commander of the bark Kate, burthen, 267½ tons, or thereabouts, mounted with guns, navigated with 14 men, American built, bound for Cape Palmas and ports W. C. Africa, merchandise and stores, hath entered and cleared his vessel according to law.

Given under our hands and seals, at the custom house of New York, this 3d day of July, one thousand eight hundred and sixty, and in the 84th year of the independence of the United States of America.

N. J. ROSSITER,
Dp. Naval Officer. [L. S.]
N. A. CARGALL,
Dp. Collector. [L. S.]

General clearance.

J. B. S.

113 LIST OF CONSULAR FEES.

Receiving and delivering ship's papers.

1. For receiving and delivering ship's register and papers, including consular certificates as prescribed in forms Nos. 38 and 39, half a cent on every ton registered measurement of the vessel for which the service is performed.

Discharging or shipping seamen or mariners.

2. For every seaman, from one to ten, who may be discharged or shipped, including the certificates therefor attached to crew lists and shipping articles, to be paid by the master of the vessel, fifty cents; but no additional charge shall be made for any number of seamen exceeding ten, who may be discharged from or shipped between the date of the arrival and departure of the vessel.

Protests, passports, &c.

3. For noting marine protests	$1 00
4. For extending protest	2 00
And if it exceed two hundred words, for every additional one hundred words	1 00
5. For issuing warrant of survey on vessels, hatches, cargo, provisions, and stores, or either	1 00
6. For a passport, including seal	1 00
For visaing a passport	1 00
8. For preparing agreement of master to give increased wages to seamen, attested under seal	1 00
9. For preparing any other official document or instrument of writing not herein named or enumerated, if under one hundred words	1 00
If exceeding one hundred words, for every additional hundred words	50

For the following certificates.

10. Of the deposit of a ship's register and papers, when required by custom-house authorities	25
11. In cases of vessels deviating from the voyage	50
12. When ship's register is retained *entire* in the consulate	25
13. For master to take home destitute American seamen	no fee.
14. Of conduct of crew on board, in cases of refusal of duty, and in cases of imprisonment, &c	25
15. Given to master at his own request, (for example, see form No 48)	50
16. To a seaman of his discharge	
17. Of appointment of new master, including oath of master	1 00
18. Of the ownership of a vessel	50
19. Of decision and award, in cases of protests against master, passengers, or crew, (for example, see form No. 49)	2 00
20. Of roll or list of crew, when required by the captain or authorities of the port	50
21. To bill of health	50
22. To shipping articles	50
23. Of cancelling ship's register	50
24. To debenture certificates, including oaths of master and mate	1 25
25. To invoice, including oath	2 00
26. To currency	50
27. Of sea letter	2 00
28. Of endorsement of bottomry on ship's register	50
29. Of ditto on payment of bottomry on ship's register	50
30. Of ditto of new ownership on ship's register	50

Acknowledgments.

31. Of the master to bottomry bond	1 00
32. Of the merchant to assignment of bottomry bond	1 00
33. Of the vendor to a bill of sale of vessel	1 00
34. Of the master to a mortgage or mortgage bill of sale of vessel	1 00
35. Of the master to an order for payment of seamen's wages, or voyages, at home, including making up order, if required	50
36. Of one or more persons to a deed or instrument in writing	2 00
37. Of one or more persons to a power of attorney	2 00

Declarations and oaths

38. Of declaration and oath of master to one or more desertions, including oaths, attached to crew list and shipping articles, each	50
39. To one or more deaths or losses of seamen overboard at sea, including oaths, attached to crew list and shipping articles, each	50
40. To not being able to procure two-thirds of a crew of protected American seamen	50
41. To ship's inventories or stores	50
42. To the correctness of log-book	50
43. To ship's bills and vouchers for disbursements and repairs	50

Authenticating copies of papers.

44. Of marine note of protest	1 00
45. Of extended protest	2 00
46. Of call, warrant, and report of survey on vessel, hatches, cargo, provisions, and stores, or either, (for example, see form No. 50)	1 00
47. Of inventories and letters, or either, of masters	1 00
48. Of account of sales of vessel, cargo, provisions, and stores, or either	1 00
49. Of advertisement for funds on bottomry	1 00
50. Of advertisement of sale of vessel or cargo, provisions, or stores	1 00

Authenticating signatures.

51. To reports of survey on vessel or cargo, provisions or stores	1 00
52. To estimate of repairs of vessel	1 00
53. To (auctioneer's) account of sales of vessel or cargo, provisions or stores	1 00
54. To average bonds	2 00
55. Of governors, judges, notaries public, custom-house and other officers	2 00
56. Of merchants and individuals	2 00
57. For any other consular certificates or services of like character not herein named or enumerated	50

Consul's orders and letters.

58. To send seamen to hospital	no fee
59. To send seamen to prison	50
60. To release seamen from prison	50
61. To authorities or captain of the port, in cases of sinking vessels, (for example, see Form No. 51)	50
62. Requesting the arrest of seamen	50
63. For any other letter or order of like character	50

Filing documents in consulate.

64. Calls of survey on vessel, hatches, cargoes, provisions, and stores, or either	25
65. Warrants of survey on vessel, hatches, cargoes, provisions, and stores, or either	35
66. Reports of survey on vessel, hatches, cargoes, provisions, and stores, or either	35

67. Estimate of repairs of vessels 25
68. Consul's certificate to advertisement for funds on bottomry 25
69. To advertisement of sale of vessel, cargo, provisions, and stores, or either 25
70. Inventories of vessels, cargo, provisions, and stores, or either ... 25
71. Letter of master, notifying consul of sale of vessel, cargo, provisions, stores, or either 25
72. Of master notifying auctioneer of sale of vessel, cargo, provisions, and stores, or either 25
73. Accounts of sale of vessel, cargo, provision, and stores, or either 25
74. For filing any other documents prepared in or out of the consulate 25

Recording documents.

75. Calls of survey on vessels, hatches, cargo, provisions, and stores, or either; warrants and reports of ditto, ditto; estimates of repairs; certificates of consuls to advertisements for funds on bottomry, and of sale of vessel; inventories of vessel, cargo, provisions, and stores; letter of master to consul, notifying sale of vessel, cargo, provisions, and stores, or either; letter of master to auctioneer, and account of sales of vessel, cargo, provisions, and stores, or either, for every one hundred words 20
[As the original documents are required to be filed in the consulate, it will not be necessary to record them. Should it ever become necessary, however, to deliver up the originals, they must be recorded before delivery, the party receiving the same paying the record fee as above mentioned.]
76. Order and consul's certificate to pay seamen's wages or voyages, at home 25
77. Certificate given to master at his own request, when required ... 25
78. Appointment of new master 25
79. Application of a citizen of the United States for a sea letter 25
80. Sea letter, for every one hundred words 20
81. Bill of sale, when required, for every one hundred words 20
82. Consul's letter to captain of port, or authorities, in cases of sinking vessels 25
83. Consul's certificate to masters taking home destitute American seamen ..... no fee.
84. Protests of masters and others, other than marine protests, for every one hundred words 20
85. Average bonds, when required, for every one hundred words 20
86. Powers of attorney, when required, for every one hundred words 20
87. Any other document or instrument of writing not herein named or enumerated, prepared in or out of the consulate, and required to be recorded, for every one hundred words 20

Estates of deceased American citizens.

88. For taking into possession the personal estate of any citizen who shall die within the limits of a consulate, inventorying, selling, and finally settling and preparing, or transmitting according to law the balance due thereon, five per cent. on the gross amount of such estate. If part of such estate shall be delivered over before final settlement, two and one-half per cent. to be charged

on the part so delivered over as is not in money, and five per cent. on the gross amount of the residue. If among the effects of the deceased are found certificates of foreign stocks, loans, or other property, two and one-half per cent on the amount thereof. No charge will be made for placing the official seal upon the personal property or effects of such deceased citizen, or for breaking or removing the seals, when required by the person or persons referred to in section 29 of the act of August 18, 1856.

Miscellaneous services.

89. For consul's seal and signature to clearance from custom-house authorities	50
90. For administering oaths, not hereinbefore provided for, each	25
91. For consul's attendance at a shipwreck, or for the purpose of assisting a ship in distress, or of saving wrecked goods or property, over and above travelling expenses, a per diem of four dollars, whenever the consul's interposition is required by the parties interested	4 00
92. For attending an appraisement, when the goods or effects are under one thousand dollars in value	3 00
93. For attending valuation of goods of one thousand dollars and upwards in value, for every day's attendance during which the valuation continues	5 00
94. For attending sale of goods, if the purchase-money be under one thousand dollars	3 00
95. For attending sale of goods, if the purchase-money is one thousand dollars and upwards, for every day during which the sale continues	5 00
96. For attending sale of vessel, when required	2 00

Fees for unofficial services, perquisites of the consular officers.

As the unofficial act of a consular officer may be performed by a notary public, and as the compensation charged therefor is regarded as a perquisite of his office, the rate of such compensation may be determined either by agreement or the custom of the place, subject, however, to future instructions.

By order of the President:

W. L. MARCY,
Secretary of State.

114 *Return of merchandise unladen under our inspection, pursuant to orders for that purpose, from on board the bark Kate, Otto, master, having been outward bound. Discharged September 17—24; returned September 25, 1860.*

Date of permit.	Mark.	Numbers and description of packages.
	A R	One hundred casks rum.
		Thirty iron pots.
		Six bundles hoop iron.
		Six boxes cheese.
		Eight boxes wine.
		Three boxes schnapps.
		One bbl. pigs' feet.
Not in M.		Three bbls. vinegar.
"		One roll zinc.
1 bbl. in M.		Two bbls. molasses.
"		One hundred and one bbls bread.
"		One bbl. beach sand.
		One bbl. tar.
		Twelve kegs lard.
		One box tin.
		Ten boxes candles.
		Three boxes catsup.
		Five boxes olives.
		One box olive oil.
		Five bbls. beans.
		Six bbls. peas.
Not in M.		Two bbls. lime.
"		One half bbl. pitch.
		One bbl. crushed sugar.
		One lot of lumber.
		One lot of timber.
		Five bbls. corn meal.
		Eight doz pails.
		Two cases assorted pickels.
3 not in M.		Eighty-five water casks.
		Eighteen bbls. beef.
		Two bbls. flour.
		Thirty-nine half bbls. flour.
		Five casks fish.
		One bbl. salmon.
		One bath tub.
		One surf boat.
		Five boxes vermicelli.
		Five boxes macaroni.
		One hundred and ten half bbls. rice.
		Nine cases brandy.
		Three boxes preserves.
		Eight cases drugs.
		Sixteen boxes soap.
		One hundred and thirty-four boxes herrings.
		Seven bbls. pork.
		One bbl. smoked beef.
		One bbl butter.
		One bbl. pigs' feet.
		One bbl. ale.
		Two boxes sherkins.
		One box preserved beans.
		One box jelly.
		Six boxes hardware.
		One box tallow.
		Three bbls. rice.
		Thirty-five half barrels beef.

115 *Ship stores remaining on board.*

Officers.—A. J. Wood, J. De Forest.

Two cases brandy.	Half box tea.
Seventeen cases wine.	One sack salt.
Ten bbls. potatoes.	One half sack coffee.
Two bbls. flour.	Three cans sugar.
Three bbls. feed.	16 cans crackers.
One case preserves.	Three half bbls. dried apples.
Two half bbls. mackerel.	One bbl. salt tongues.
Two tons coal.	Seven hams.
Five cases preserved meats.	One box candles.
Two cases vegetables.	Four half boxes raisins.
One case salmon.	Five globe lanterns, [not in M.]
One bbl. onions.	Twelve pewter pitchers, [not in M.]
[Not in M.] Six shovels.	Two boxes soap.
Half bbl. sausages.	One box biscuits.
One bbl. sugar.	Two boxes herring.
One bbl. ale.	One can sugar.
Four coils rope.	One box salæratus.
Two pckgs. duck.	One box cheese.
Two bbls. beef.	One box ketchup.
One bbl. pork.	One doz. tin cups, [not in M.]
Five boxes schnapps.	And sundry small stores.

Endorsed: Ex. No. 9.

Report of inspector of cargo of bark Kate, September 25, 1860, marked No. 9.

J. L. C.

116 Ex. No. 10.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the sixth day of July, in the year of our Lord one thousand eight hundred and sixty, by James J. Roosevelt, esquire, U. S. district attorney, on behalf of the United States of America, against the barque Kate, her tackle, &c., and her lading, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque, her tackle, &c., and lading, may be cited in general and special to answer the premises, and all proceedings being had, that the said barque, her tackle, &c., and lading, may, for the causes in the said libel mentioned, be condemned as forfeited to the use of the United States—

You are, therefore, hereby commanded to attach the said barque, her tackle, &c., and lading, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having

anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York on the 24th day of July, inst., at eleven o'clock in the forenoon of the same day, (if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter,) then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this sixth day of July, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth.

JAMES J. ROOSEVELT,
U. S. District Attorney.
GEO. F. BETTS, *Clerk.*

117 In obedience to the within monition, I attached the bark Kate, her tackle, &c., therein described, on the 6th day of July, 1860, and have given due notice to all persons claiming the same, that this court will on the 24th day of July inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ISAIAH RYNDERS, *U. S. Marshal.*

Dated 24th July, 1860.

Vol. 16, page 95. Southern district of New York, United States district court. The United States *vs.* The Barque Kate, her tackle, &c., and her lading. Monition ret'ble, 2d July, 1860. J. J. Roosevelt, U. S. attorney. Filed the 24th day of July, 1860. Reped. 7th Aug., 1860.

I hereby depute Maurice O'Keefe to execute the within writ.
Dated July 6, '60.

ISAIAH RYNDERS, *U. S. Marshal.*

Ex. No. 11.

118 *To the Hon. Samuel R. Betts, judge of the district court of the United States of America for the southern district of New York:*

The libel of information of James J. Roosevelt, attorney of the United States for the said southern district of New York, who prosecutes for the said United States in this behalf, and being present here in court in his own proper person in the name and in behalf of the said United States, against the barque "Kate," her tackle, apparel, and furniture, and her lading, in a case of seizure and forfeiture, alleges as follows:

First. That the United States revenue cutter Harriet Lane, a commissioned vessel of the United States of America, and belonging

to the revenue service thereof, heretofore, to wit, on the third day of July, in the year one thousand eight hundred and sixty, being under the command of John Faunce, a in the revenue service of the said United States, within the admiralty and maritime jurisdiction of this honorable court, seize and take a certain vessel, being a barque called the "Kate," her tackle, apparel, and furniture, and certain merchandise and articles hereinafter described, her lading, for the causes following, that is to say:

Second. That a certain citizen or certain citizens of the United States, or a certain foreigner, or some other person coming into or residing within the same, whose name or names are as yet to the said
119 attorney unknown, did, for himself or for themselves, or some other person or persons, whose name or names are as yet to the said attorney also unknown, either as master, factor, or owner, heretofore, to wit, on the day of , in the year one thousand eight hundred and sixty, equip, load, and otherwise prepare the aforesaid vessel, being a barque called "Kate," within a port or place of the said United States, to wit, the port of New York, and caused the said vessel, being a barque called "Kate," to sail from a port or place within the same, to wit, from the port of New York aforesaid, for the purpose of carrying on a trade or traffic in slaves to some foreign country, to the said attorney as yet also unknown, or for the purpose of procuring from some foreign kingdom, place, or country, to the said attorney as yet also unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, as yet also unknown, to be sold and disposed of as slaves, contrary to the first section of the act of Congress approved March the twenty-second, in the year seventeen hundred and ninety-four, entitled "An act to prohibit the carrying on of the slave trade from the United States to any foreign place or country."

Third. That after the passing the act of Congress approved April 20, 1818, entitled "An act in addition to the 'act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day
120 of January, in the year of our Lord one thousand eight hundred and eight,' and to repeal certain parts of the same," to wit, on the day of , in the year eighteen hundred and sixty, some citizen or citizens of the United States, or some other person or persons, whose name or names are as yet to the said attorney unknown, for himself or themselves, or some other person or persons, whose name or names are to the said attorney also unknown, either as master, factor, or owner, did fit, equip, load, and otherwise prepare the said vessel, being the barque "Kate," in a port or place within the jurisdiction of the United States, to wit, the port of New York, and within the jurisdiction of this court, and did cause the said vessel, being the barque "Kate" aforesaid, to sail from a port or place, to wit, the port of New York aforesaid, within the jurisdiction of the same, for the purposes of procuring certain negroes, mulattoes, and persons of color, from some foreign kingdom, place, or country, to the attorney aforesaid unknown, to be transported to some place

or port, to the said attorney also unknown, to be held, sold, and otherwise disposed of as slaves, and to be held to service and labor, contrary to the second section of the last-mentioned act of Congress; and that the said vessel, being the barque "Kate" aforesaid, did sail from the aforesaid port of New York, within the jurisdiction of the United States, on or about the third day of July, in the year eighteen hundred and sixty, on her aforesaid unlawful voyage, having on board of her lading consisting of certain merchan-
121 dise and other articles hereinbefore referred to, and provisions, and of which a schedule (marked A) is hereto annexed, and to which schedule reference is hereby made as part of this libel.

Fourth. That the said vessel, being the barque "Kate," is now lying in the port of New York aforesaid, within the district aforesaid, having on board of her the aforesaid merchandise, provisions, and other articles, her aforesaid lading; that by reason of the premises, and by virtue of the said act, the said barque "Kate," her tackle, apparel, and furniture, and lading on board, became forfeited.

That all and singular the premises aforesaid are and were true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court. Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said barque "Kate," and her tackle, apparel, and furniture, and lading on board, in this behalf to be made; and that all persons interested in the said barque "Kate," and her tackle, apparel, and furniture, and lading on board, may be cited to answer the premises; and that, all due proceedings being had thereon, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said barque "Kate," her tackle, apparel, and furniture, and lading on board, may be condemned for the use of the United States, according to the said acts of Congress, &c.

JAMES J. ROOSEVELT,
U. S. Attorney.

122 *Schedule A.*

A. R.	100	pipes rum.
T.	200	box. herrings.
"	5	cask codfish.
R.	12	box. cheese.
"	4	bbls. ale and cider.
"	6	box. wine or liquor.
"	2	bskts. champagne.
T.	110	hlf. bbls. rice.
R.	12	box. gin.
T.	10	bbls. beef.
"	5	" pork.
"	10	kegs lard.
R.	6	hlf. bbls. beef. "Family."
"	1	bbl. hams.
"	1	" smok'd beef.

T. 6 box.
" 30 " " "
" 100 pails.
R. 2 box. a la mode beef.
T. 82 water casks for oil.
" 6 hoop iron.
R. 2 bgs. nuts.
" 1 bbl. salmon.
" 2 tierces biscuit.
T. 80 bbls. navy bread.
" 20 tierces crackers.
R. 3 bbls. vinegar.
" 1 keg sausages.
R. C. 8 box. drugs and medicines.
123 R. C. 1 keg drugs.
5 M feet lumber.
R. 12 box. cognac.
" 12 " cordials.
" 25 " vegetables.
" 2 " jellies.
T. 40 hlf. bbls. flour.
" 15 boxes soap.
" 10 " candles.

Endorsed: 16, 95. U. S. district court. Marked No. 11. The United States. The barque Kate, her tackle, apparel, &c, and lading. Libel. James J. Roosevelt, U. S. dist. attorney. Filed July 6th, 1860.

124 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the tenth day of July, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARQUE KATE, her tackle, &c., and owner, *etc.*
asm.
THE UNITED STATES.

And now Charles P. Lake, intervening for the interest of himself in the bark Kate, her tackle, &c., and cargo, appears before the honorable court and makes claim to the said vessel, her tackle, &c., and cargo, as the same are attached by the marshal, under process of this court, at the instance of J. J. Roosevelt, U. S. dist. att'y; and the said Charles P. Lake avers that he was in possession of the said vessel, her tackle, &c., and cargo, at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said vessel, her tackle, &c., and owner, as common carrier of said

cargo, and that no other person is the owner thereof, and the said owner is the true and lawful bailee thereof as owner and common carrier; wherefore he prays to defend accordingly.

CHAS. P. LAKE.

Sworn to and subscribed this 10th day of July, A. D. 1860, before me. JOSEPH BRIDGHAM,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctor for Claimant.

125 Marked No. 12. Vol. 16, No. 95. United States district court for the southern district of New York. The bark Kate, her tackle, &c., and cargo, *asm.* The United States. Beebe, Dean & Donohue, proctors for claimant. Claim of owner, Charles P. Lake, as owner and common carrier. Filed the 10th day of July, 1860.

126 Ex. No. 13.

U. S. district court.

THE UNITED STATES
vs.
THE BARK "KATE," her tackle, &c., and her cargo.

Exceptions to claim.

And now, James J. Roosevelt, attorney for the said United States, excepts to the competency of the said claim of the said Charles P. Lake claiming the said barque, &c., and her cargo, and takes issue:

First. To the averment by him, the said Charles P. Lake, that he was in possession of the said vessel, her tackle and cargo, at the time when the same was attached under the process in this action.

Second. To the averment by him, the said Charles P. Lake, that he is the true and bona fide owner of the said vessel, her tackle, &c., and owner as common carrier of said cargo; and that no other person is the owner thereof.

Third. To the averment by him, the said Charles P. Lake, that he is the true and lawful bailee thereof, as owner and common carrier.

JAMES J. ROOSEVELT,
U. S. District Attorney.

126 16, 95. U. S. district court. (Marked No. 13.) The United States *vs.* The Bark Kate, her tackle, &c., and her cargo. Exceptions to claim. James J. Roosevelt, U. S. dist. att'y. Filed July 12th, 1860.

128 U. S. district court.

THE U. S.
vs.
THE BARK KATE.

Justification of stipulation for value of vessel. Augt. 22, 1860.

Examined by district attorney.

John J. Diehl sworn: My business is a retail undertaker—one of the largest establishments in New York. I also keep fourteen horses, five good carriages, a barouche carriage, four wagons, five or six sleighs, and harness, &c., belonging to them—a regular livery establishment.

I am in this country nearly 22 years; I am a naturalized citizen. I own real estate, a house and lot, 133 Essex street—in fact, two houses. the same house I live in. It is subject to a mortgage $5,000, $3,000 to the Widows and Orphans' Asylum, and $2,000 to my brother-in-law Lante. I have never had any judgments against me. The annual tax I pay on that for real estate is $104. It is valued by the assessor at about $6,000. It consists of a dwelling and store; and I manufacture in the lofts in the rear.

I have no other real estate in this country. My property consists of my house and lot, worth, I consider, $11,000. The lot is 25×89
129 or 90 feet, and two houses built on that lot, one front and one rear. Value of lots unimproved in that neighborhood is $4,000 to $5,000.

My livery business is worth $9,000 to $10,000, that is, the property in it.

My stock and factory are worth about $4,000, raw materials and made up. My yearly business is about $20,000.

I think my horses, carriages, sleighs, robes, &c., are worth $9,000. I can't say what they would bring at auction; think $8,000.

My stock in trade is ready-made coffins, 600 to 700 mahogany and white wood. I need 1,400 to 1,500 a year in my business.

I owe some little debts, not over $500, besides the mortgages.

I have once been bail here for a friend of mine named Carter; I don't know his Christian name; I have heard it often, but I can't remember. My bail for him was $3,000.

I never was bail in this court for anybody else. I was bail three or four years ago for cases which are now discharged—a liquor dealer at Mr. Bliss's office, $7,000—Kohbertz.

I am not endorser for anybody. I have lived in this city nineteen years; I have a wife and children. I know Charles P. Lake; not a cent has been put into my hands to become bail. One of my friends asked me to become bail—Mr. Wettz; I hav'nt been promised anything for becoming bail.

I own that property in fee simple; I hav'nt given any lease
130 on it; I have hired part of it for a lager beer saloon, and part

for a billiard saloon, and the front basement an oyster saloon, $12 a month, the rest $60 a month; I hire a dwelling in the rear for $10 a month, the rest I occupy myself. I keep carriages next door, that is 135, and belongs to my wife. I bought this lot six or seven years ago. I paid $3,500 for the lot I bought of Sam'l S. Combs. I paid a little over $7,000 for the buildings on my lot. Mine is not connected with my wife's. I paid cash for the lot. I borrowed money to put up the house.

There never was judgment against me on any bail ex'd by Mr. Donohue.

I have debts due to me; I hold about $2,000 promissory notes, and debts due to me in my business $2,000 more; this is $4,000 due to me which I consider good; no mortgage to secure this.

J. J. DIEHL.

Subscribed and sworn to before me this 22d day of August, 1860.

GEO. F. BETTS,
U. S. Comm'r.

Adjd. to August 24th, 12 m.

Augt. 24th.—Gov't calls.

James O. C. Fabb sworn: I have ex'd the judgment records in the county clerk's office of this county since Nov., 1844. I find a judgment there entered against John J. Diehl at the suit of Charles Benton. Filed Feb. 27th, 1856. Marine court, $274 $\frac{36}{100}$, unsatisfied of record.

131 I searched in the register's office of this county. I find that the mortgage which Diehl testified to having given to the Widows and Orphans' Society for $3,000, was for $3,500. I also find a mortgage given on a piece of property by Catharine Diehl, in which John J. Diehl joins, and which recites that they have given their bond of $16,000 to secure the payment of $8,000.

That is on another piece of property next to that which Diehl testified to owning.

Redir.

The assessor's value of 133 Essex street is this year $4,200.

JAMES O. C. FABB.

Signed and sworn to this 24th day of August, 1860, before me.

GEORGE F. BETTS,
U. S. Comm'r.

John J. Diehl recalled: The house and lot next to mine, on which is the mort. spoken of by Mr. Fabb, is worth $10,000. The mortgage on it is reduced to $4,500. I never was sued by any man by the name of Benton. I never have been called on by the sheriff or constable

to pay any such judgment. I have paid $500 on the mortgage to the treasurer of the Widows and Orphans' Society, since I gave it. The mortgage to the W. and O. Soc'y is not due for four years. I had it first for five years, then extended five years more. That extension is on the bond in writing. I made the payments on the $8,000 mortgage myself.

I have no recollection of executing any lease on my wife's house.

There are three John J. Diehls in this city, all Germans.

J. J. DIEHL.

Signed and sworn to before me this 24th day of August, 1860.

GEO. F. BETTS,
U. S. Comm'r.

132 Evidence as to the sufficiency of Mr. Diehl closed.

Endorsed: Marked No. 14. The United States *vs.* Bark Kate. Justification of surety for vessel.

133 Marked No. 15.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Friday, the third day of August, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, her tackle, &c., and lading, *ads.* THE UNITED STATES.

On reading and filing consent and the mandate of the district judge, endorsed thereon, and on motion of Beebe, Dean and Donohue, proctors for the claimants, it is ordered that D. Colden Murray and Frederick J. W. Barkman be, and they are hereby, appointed appraisers, to appraise the value of the bark Kate, her tackle, &c., and lading.

And it is further ordered that the clerk of this court give notice of the appointment of said D. Colden Murray and Frederick J. W. Barkman as such appraisers.

134 Marked No 16.

U. S. district court.

THE UNITED STATES
vs.
THE BARK KATE, her tackle, &c. and the cargo laden on board thereof.

It is hereby consented that D. Colden Murray and Frederick J. W. Barkman be appointed appraisers to appraise the above-named

bark "Kate," her tackle, &c., and the cargo laden on board thereof, and that an order to that effect be entered.

Dated July 30th, 1860.

J. J. ROOSEVELT, *U. S. Dist. Att'y.*

135 Marked No. 17.

U. S. district court, in court.

THE UNITED STATES *vs.* THE BARK KATE. } 16—95. August 29, 1860.

The above vessel being under arrrest at the suit of the United States, on a claim of forfeiture for having been employed in the slave trade, in violation of the laws of the United States, and John J. Diehl, of the city of New York, being offered as bail or stipulator in behalf of the claimant in the above cause, and having signed and acknowledged such bond or stipulation, conditioned to pay the sum of nine thousand and one hundred dollars, being the appraised value of said vessel, and justified upon oath his ability to respond in the said sum, on his undertaking in such bail, bond, or stipulation aforesaid, and the United States attorney having appeared for the plaintiffs, and objected to the sufficiency of the said bail and stipulation, and offered evidence in support of said objections, and it appearing to the court, in consideration of the allegations and process of the parties respectively, that the bail so offered is adequate and sufficient for the sum aforesaid, it is ordered that the said bail, bond, or stipulation be approved, and that the usual order be entered by the clerk for the discharge of the said vessel from her arrest in the above action.

(Signed) SAMUEL R. BETTS.

136 Marked No. 17.

United States district court, southern district of New York.

THE UNITED STATES *vs.* THE BARK KATE, her tackle, &c., and her cargo laden on board. } In admiralty.

The undersigned having been appointed appraisers to appraise the value of the said bark, her tackle, &c., and cargo laden on board, do solemnly swear that they will faithfully appraise the same to the best of their skill and ability.

F. J. W. BARKMAN.
D. COLDEN MURRAY.

Subscribed and affirmed to this seventh day of August, 1860, before me.

O. R. STEEL, *Notary Public.*

137 United States district court, southern district of New York.

THE BARK KATE, her tackle, &c., and lading, *ads.* THE UNITED STATES. } In admiralty.

We, the undersigned, having been duly appointed and sworn as appraisers to appraise the value of the bark Kate, her tackle, &c., and lading, do report that we have carefully examined and appraised the bark Kate, her tackle and lading, and do find that the bark Kate, her tackle, apparel, and furniture, is worth the sum of four thousand dollars, and that the lading is worth the sum of fifty-one hundred and seventeen dollars and 48 cents.

All which is respectfully submitted.

D. COLDEN MURRAY.
F. J. W. BARKMAN.

Dated New York, Aug. 13th, 1860.

138 Marked No. 18.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 30th day of Aug. inst., in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK KATE, her tackle, &c., and lading, *ads.* THE UNITED STATES. } Vol. 16, page 95.

On filing claim and stipulations for costs and value, the latter in the sum of nine thousand one hundred dollars, and the court having approved of the sufficiency of John J. Diehl, stipulator, on motion of Beebe, Dean & Donohue, proctors for the claimant, it is ordered that the said vessel, her tackle, &c., and lading, be discharged from the custody of the marshall, the stipulation for value to represent said vessel and cargo.

139 Marked No. 30.

District court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, begun and held at the city of New York, within and for the dis-

trict aforesaid, on the first Tuesday of July, in the year of our Lord one thousand eight hundred and fifty-six, and continued by adjournment to and including the day of July, in the same year.

SOUTHERN DISTRICT OF NEW YORK, ss:

The jurors of the United States of America, within and
140 for the district aforesaid, on their oath, present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, build a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further pre-
sent, that Henrico De Costa, late of the city of New York, of
141 the southern district of New York aforesaid, laborer, heretofore, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves from any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, fit a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held

to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

142 And the jurors aforesaid, upon their oaths, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, equip a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slave, and to be held to service and labor, against the peace of the United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

143 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, load a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid as yet unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

144 And the jurors aforesaid, upon their oaths, do further pre-

sent, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid. laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, prepare a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a certain foreign port or country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

145 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, send away a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

146 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York, aforesaid, laborer, heretofore, to wit,

on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as owner, cause to be built, fitted out, equipped, loaded, and otherwise prepared and sent away, a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

147 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as factor, build a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

148 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to

prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, factor, fit a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

149 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, of the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slave into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as factor, equip a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number of, to wit, five hundred, negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

150 And the jurors aforesaid, on their oath, do further present, that Henrico De Costa, late of the city of New York, of the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight

hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as factor, load a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

151 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled an "Act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as factor, prepare a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

152 And the jurors aforesaid, upon their oath, do further present that Henrico De Costa, late of the city of New York, and of the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himself, as factor, send away

a certain ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such made and provided.

And the jurors aforesaid, upon their oath, do further present,
153 that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for himsef, as factor, cause to be built, fitted out, loaded, and otherwise prepared, and sent away a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the United States of America, against their dignity, and against the form of the statute of the said United States in such case made and provided.

154 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons, whose name and names all to the jurors aforesaid unknown, factor, build a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the pur-

pose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statutes of the said United States in such case made and provided.

154½ And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit: on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name or names are to the jurors aforesaid unknown, as factor, equip a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

155 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of an act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any place or port within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name and names are to the jurors aforesaid unknown, as factor, equip a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number of, to wit, five hundred, negroes,

mulattoes, or persons of color, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service, against the peace of the said United States of America, against their dignity, and against the form of the statute of the said United States in such case made and provided.

156 And the jurors aforesaid, on their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name and names are to the jurors aforesaid unknown, as factor, load a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, against their dignity, and against the form of the statute of the said United States in such case made and provided.

157 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name and names are to the jurors aforesaid unknown, as factor, prepare a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid

unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States of America, against their dignity, and against the form of the statute of the said United States in such case made and provided.

158 And the jurors aforesaid, on their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name or names are to the jurors aforesaid unknown, as factor, send away a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of color, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor, against the peace of the said United States, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

159 And the jurors aforesaid, upon their oath, do further present, that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did, for some person or persons whose name and names are to the jurors aforesaid unknown, as factor, cause to be built, fitted out, equipped, loaded, and otherwise prepared and sent away, a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade, and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place

to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service or labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

160 And the jurors aforesaid upon their oath do further present, that a certain person or certain persons, whose name and names are to the jurors aforesaid unknown, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same, at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms did, for himself and themselves, as owners, build, fit, equip, load, and otherwise prepare and send away, a certain ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor; and that Henrico De Costa, late of the city of New York, in the southern district of New York, aforesaid, laborer, then and there, to wit, on the day and year aforesaid, and after the passage of the said act of Congress, at the port of New York aforesaid, and within the said jurisdiction, did for himself, as owner, aid and abet the aforesaid person and persons, whose name and names are to the jurors aforesaid unknown, therein, against the peace of the said United States, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

161 And the jurors aforesaid, upon their oath aforesaid, do further protest, that a certain person and certain persons, whose name and names are to the jurors aforesaid unknown, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms did for themselves, as owners, build, fit, equip, load, and otherwise prepare and send away, a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine

called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor; and that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, then and there, to wit, on the day and year aforesaid, and after the passage of
162 the act of Congress, at the port of New York aforesaid, and within the said jurisdictions, did for himself, as factor, aid and abet the aforesaid unknown person and persons therein, against the peace of the said United States, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

163 And the jurors aforesaid, upon their oath aforesaid, do further present, that a certain person and certain persons, whose name and names are to the jurors aforesaid unknown, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress approved April 20, 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms did for themselves, as owners, build, fit, equip, load, and otherwise prepare and send away, a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor; and that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, then and there, to wit, on the day and year aforesaid, and after the passage of the act of the said Congress, at the port
164 of New York aforesaid, and within the said jurisdiction, did for the aforesaid unknown person and persons, as factor, aid and abet the aforesaid unknown person and persons therein, against the peace of the said United States, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

641 Endorsed: Marked No. 20.

U. S. district court.

THE UNITED STATES
vs.
HENRICO DE COSTA.

Indictment for fitting out brigantine Braman to be engaged in slave trade.

JOHN McKEAN, *U. S. Att'y.*

A true bill.

S. C. MARSH, *Foreman.*

Filed July 12th, 1856. C. W. N., No. 1.

165 Marked No. 21.

District court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, begun and held at the city of New York, within and for the district aforesaid, on the first Tuesday of July, in the year of our Lord one thousand eight hundred and fifty-six, and continued by adjournment to and including the day of July, in the same year.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America, within and for the district aforesaid, on their oath, present that Henrico De Costa, late of the city of New York, in the southern district of New York aforesaid, laborer, Joseph Pedré De Cunbia, late of the same district, laborer, Henry Rosenberg, also otherwise called Henry , laborer, and Joseph Frazer, also sometimes called Maxwell Joseph, also sometimes Maxwell J. Frazer, of said district, laborer, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress, approved April 20. 1818, entitled "An act in addition to an act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January in the year of our Lord one thousand eight hun-
166 dred and eight, and to repeal certain parts of the same." at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms did, for themselves as owners, cause to be sent away from the port of New York aforesaid, within the jurisdiction of the United States, a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large num-

ber, to wit, five hundred negroes, mulattoes, or persons of colour, from a certain foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service or labor, against the peace of the said United States of America, and against their dignity, and against the form of the statute of the said United States in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present that certain persons, whose names are to the jurors aforesaid unknown, heretofore, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and after the passage of the act of Congress, approved April 20, 1818, entitled

"An act in addition to an act to prohibit the introduction (im-
167 portation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same," at the port of New York, in the southern district of New York, and within the jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did for themselves, the aforesaid unknown persons, as owners, build, fit, equip, load, and otherwise prepare and send away a certain ship or vessel, being a brigantine called the Braman, with the intent then and there to employ such aforesaid ship or vessel, being a brigantine called the Braman, in the trade and for the purpose of procuring a large number, to wit, five hundred negroes, mulattoes, or persons of colour, from a foreign country, to wit, Africa, to be transported to a certain place to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service and labor; and that the said Placido De Castro, Henrico De Costa, Joseph Pedro De Cumbia, Henry Rosenberg, and Manuel J. Frazer, all late of the city of New York, in the southern district of New York aforesaid, laborers, then and there, to wit, on the day and year aforesaid, and after the passage of the said act of Congress, at the port of New York aforesaid, and within the said jurisdiction, did, for the aforesaid persons as factors, aid and abet the aforesaid unknown persons therein, against the peace of the said United States, and against their dignity, and against the form
168 of the statute of the said United States in such case made and provided.

643. Endorsed: The United States of America *vs.* Henrico De Costa, Joseph Pedio De Cumbia, Placido De Castro, Henry Rosenbergh, alias Henry Rosenbergh, and Joseph Frazer, alias Manuel Joseph, alias Manuel J. Frazer. Indictment, causing brigantine Braman to be sent into the slave trade. 3d vol. U. S. St. at Large. John McKean, U. S. district attorney. (Marked No. 21.) J. L. C. A true bill. S. C. Marsh, foreman.

Filed July 12th, 1856. C. W. N., No. 2.

169 *Report and manifest of the cargo laden at the port of New York on board the bark Kate, Otto, master, bound for Cape Palmas, and leeward ports of the west coast of Africa.*

Marks.	No.	Packages and contents.	Quantity—lbs., gall., &c.	Value of domestic mcdse.	Value of foreign msde.—bond.	To be landed at—
A R	100	100 pipes rum	100 pipes.			Cape Palmas and leeward ports, on the west coast of Africa.
T	200	200 boxes herrings	200 box.	$60 00		
"	5	5 casks codfish	3,350 lbs.	100 00		
R	12	12 boxes cheese	131 "	20 00		
"	4	Brls. ale and cider, four	32 "	48 00		
"	6	Six boxes wines or liquors	6 doz.	58 00		
"	2	2 b-kts. champagne	4 boxes.	24 00		
T	110	110 brls., ½, rice	12,088 lbs.	570 00		
R	12	12 boxes gin	12 box.	60 00		
T	10	10 brls. beef	10 brls.	140 00		
"	5	5 " pork	5 "	77 00		
"	10	10 kegs lard	544 lbs.	82 00		
R	6	6 brls, ½, beef, family	6 boxes.	60 00		
"	1	1 bbl. hams	178 lbs.	24 00		
"	1	1 do. smoked beef	150 "	15 00		
T	6	6 box. cont'g iron pots	2,432 "	243 00		
"	30	30 iron pots	450 "	32 00		
"	100	100 pails	100 "	18 00		
R	2	2 box. a la mode beef	2 box.	12 00		
T	82	82 water casks, for oil	82 casks.	522 00		
"	6	6 bdls hoop iron	6 bdls.	14 00		
R	2	2 bags almonds and walnuts	70 lbs.			
"	1	1 brl. salmon	1 brl.	19 00		
"	2	2 tins biscuit	38 lbs.	4 00		
T	80	80 brls. navy bread	8,383 lbs.	294 00		
"	30	20 tins crackers	240 "	12 00		
R	3	3 brls. vinegar	3 brls.	15 00		
"	1	1 keg sausages	100 lbs.	15 00		
R C	8	8 boxes drugs and medicines	8 boxes.	282 00		For Otto.
"	1	1 keg.....do	1 keg.			
	5,000	5 M feet lumber	5,000 ft.	90 00		
R	12	12 box. cognac, French	12 box.	96 00		
"	12	12 " cordials	12 "	98 00		
"	25	25 " assorted vegetables	27 boxes.	212 00		
"	2	2 " jellies				
T	40	40 brls., ½, flour	40 brls.	140 00		
"	15	15 box. soap	375 lbs.	27 00		
"	10	10 box. candles	300 "	90 00		
"	30	30 brls., ½, beef	30			
	4	4 kegs tongues	4	150 00		

70 UNITED STATES OF AMERICA:

It is agreed between the master and seamen or mariners of the bark Kate, of New York, whereof Otto is at present master, or whoever shall go for master, now bound from the port of New York to Cape Palmas and a market, with the privilege of one or more ports on the west coast of Africa, and back to a final port of discharge in the United States. And it is hereby expressly agreed, that should the said ship, on the said voyage, be seized, detained, or fined for smuggling tobacco, or any other article, by one or more of the undersigned sailors, cooks, or stewards, they shall all be responsible for the damages thus resulting, and shall severally forfeit their wages, and all their goods and chattels on board, to the amount of such damage, and that the certificate of the person or persons who may seize, detain, or fine the said ship for smuggling, signed by him or them, and verified by the American consul at , under his seal of office, shall be conclusive evidence of the facts therein stated, in all courts whatsoever, especially and as to the fact that smuggling had been committed, the individual or individuals by whom the same had been committed, the amount of the fine imposed therefor upon the said ship, the incidental expenses thereon, and the number of days the said ship was detained in consequence thereof. No grog allowed, and none to be put on board by the crew; and no profane language allowed, nor any sheath-knives permitted to be brought or used on board.

That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage. And the said master doth hereby agree with and hire the said seamen or mariners for the said voyage, at such monthly wages or prices to be paid pursuant to this agreement, and the laws of the Congress of the United States of America; and they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel on board any other vessel or be on shore, under any pretence whatsoever, until the above said voyage be ended, and the said vessel be discharged of her loading, without leave first obtained of the captain or commanding officer on board; that in default thereof he or they will be liable to all the penalties and forfeitures mentioned in the marine law, enacted for the government and regulation of seamen in the merchants' service, in which it is enacted, "that if any seaman or mariner shall absent himself from on board the ship or vessel without leave of the master or officer commanding on board, and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman or mariner shall re-

turn to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owner or owners of the said ship or vessel, and moreover shall be liable to pay him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place." And it is further agreed, that in case of desertion, death, or imprisonment, the wages are to cease. And it is further agreed, by both parties, that each and every lawful command which the said master or other officer shall think necessary hereafter to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, shall be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with everything belonging to him or them on board the said vessel. And it is further agreed on, that no officer or seaman belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of said vessel at the said vessel's final port of discharge, and her cargo delivered. And it is hereby further agreed, between the master, officers, and seamen of the said vessel, that whatever apparel, furniture, and stores each of them may receive into their charge, belonging to the said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged, through their carelessness or insufficiency, it shall be made good by such officer or seamen by whose means it may happen, to the master and owners of the said vessel. And whereas it is customary for the officers and seamen, while the vessel is in port, or while the cargo is delivering, to go on shore at night to sleep, greatly to the prejudice of such vessel and freighters, be it further agreed by the said parties, that neither officer nor seaman shall, on any pretence whatever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary to order relative to said vessel or cargo. And whereas it frequently happens that the owner or captain incurs expenses while in a foreign port, relative to the imprisonment of one or more of his officers or crew, or in the attendance of nurses, or in the payment of board on shore for the benefit of such person or persons, now it is understood and agreed by the parties hereunto, that all such expenditures as may be incurred by reason of the foregoing premises shall be charged to and deducted out of the wages of any officer, or such one of the crew, by whose means or for whose benefit the same shall have been paid. And whereas it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there de-

liver his charge to the vessel's husband, or his representative, to see the same safely landed; that each seaman or mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no desertion, plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to the payment of the wages or hire that may become due to him pursuant to this agreement, as to their names is severally affixed and set forth: *Provided, nevertheless,* That if any of the said crew disobey the orders of the said master, or other officer of the said vessel, or absent himself at any time without liberty, his wages due at the time of such disobedience or absence shall be forfeited; and in case such person or persons so forfeiting wages shall be reinstated or permitted to do further duty, it shall not do away such forfeiture. It being understood and agreed by the said parties, that parol proof of the misconduct, absence, or desertion of any officer or any of the crew of said vessel may be given in evidence at any trial between the parties to this contract, any act, law, or usage to the contrary thereof notwithstanding.

In testimony whereof, and for the due performance of each and every of the above-mentioned articles and agreements, and acknowledgment of their being voluntarily, and without compulsion or any other clandestine means being used, agreed to and signed by us, we have each and every of us hereunto affixed our hands, the month and day against our names as hereunder written.

And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they will render themselves on board the said vessel on or before Friday, the 14th day of September, 1860, at 10 o'clock in the forenoon.

Date of entry.	Names.	Station.	Birthplace.	Age.	Height.		Wages per month.	Advance wages.
					Feet.	Inches.		
		Master						
On "before"	O. Raven	Mate	New York	36	5	10	40 00	40 00
	Francis Stevens	2d mate	New York	33	5	8	30 00	30 00
	John Anderson	Cook and steward	Maine	30	5	8	25 00	25 00
	James Seymour	Cabin boy	New York	20	5	6	12 00	12 00
" "	Douglas Burns	Seaman	New York	24	5	8	15 00	15 00
" "	Frank George	do	Louisiana	25	5	4	15 00	15 00
" "	Martin Kent	do	Massachusetts	27	5	6	15 00	15 00
" "	Thomas Pritchard	do	Louisiana	27	5	4	15 00	15 00
" "	Frank Antonie	do	New York	24	5	5	15 00	15 00
	Charles Seymour	do	New York	26	5	8	15 00	15 00
" "	Joseph Manual	do	Massachusetts	24	5	8	15 00	15 00
" "	Isaac Loverage	do	New York	28	5	10	15 00	15 00
" "	Peter Lowerick	do	Massachusetts	18	5	5	15 00	15 00

Witness to signing:

JOHN T. SOUTHWELL.

DISTRICT AND PORT OF NEW YORK, *Collector's Office, September*, 1860.

I hereby certify the above to be a true copy of the original on file in this office.

An act for the government and regulation of seamen in the merchants' service, passed July 30, 1799.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of December next every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards, bound from a port in one State to a port in any other than an adjoining State, shall, before he proceed on such voyage, make an agreement in writing, or in print, with every seaman or mariner on board such ship or vessel, (except such as shall be apprentice or servant to himself or owners,) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. And if any master or commander of such ship or vessel shall carry out any seaman or mariner, (except apprentices or servants as aforesaid,) without such contract or agreement being first made and signed by the seaman or mariner, such master or commander shall pay to every such seaman or mariner the highest price of wages which shall have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage, within three months next before the time of such shipping: *Provided* such seaman or mariner shall perform such voyage; or if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall moreover forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and such seaman or mariner, not having signed such contract, shall not be bound by the regulations, nor subject to the penalties and forfeitures contained in this act.

SECTION 2. *And be it enacted,* That at the foot of every such contract there shall be a memorandum in writing of the day and hour on which the seaman or mariner who shall ship and subscribe shall render themselves on board to begin the voyage agreed upon; and if any such seaman or mariner shall neglect to render himself on board the ship or vessel for which he was shipped at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel, shall, on the day on which such neglect happened, make an entry in the log-book of such ship or vessel of the name of such seaman or mariner, and shall in like manner note the time that he so neglected to render himself, (after the time appointed,) every such seaman or mariner shall forfeit for every hour which he shall so neglect to render himself one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages; and if any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or, having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner, or consignee of the said ship or vessel a sum equal to that which shall have been paid to him by advance at the time of signing the contract, over and besides the sums so advanced, both

which sums shall be recoverable in any court, or before any justice or justices of any State, city, town, or county within the United States, which by the laws thereof have cognizance of debts of equal value against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed on the voyage.

SECTION 3. *And be it enacted*, That if the mate, or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to a foreign port, shall, after the voyage is begun, and before the ship or vessel shall have left the land, discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master or commander shall, upon the request of the said mate, (or other officer,) and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or if not, to some justice of the peace of the city, town, or place, taking with him two or more of the said crew who shall have made such request; and thereupon such judge or justice is hereby authorized and required to issue his precept, directed to three persons in the neighborhood, the most skilful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him, the said judge or justice, in writing under their hands, or the hands of two of them, whether in any or in what respect the said ship or vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the said judge or justice shall adjudge and determine, and shall endorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; if not, whether such repairs can be made, or deficiencies supplied, where the ship or vessel then lies, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted. And the master and crew shall in all things conform to the said judgment; and the master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed, or a fair copy thereof, certified by the said judge or justice; but if the complaint of the said crew shall appear upon the said report and judgment to have been without foundation, then the said master, or the owner or consignee of such ship or vessel, shall deduct the amount thereof and of reasonable damages for the detention, (to be ascertained by the said judge or justice,) out of the wages growing due to the complaining seamen or mariners. And if after such judgment such ship or vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations, as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any justice of the peace to commit by warrant, under his hand and seal, every such seaman or

mariner who shall so refuse to the common jail of the county, there to remain without bail or mainprize until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said justice, and inserted in the said warrant; and the surety or sureties of such seaman or mariner (in case he or they shall have given any) shall remain liable for such payment, nor shall any such seaman or mariner be discharged upon any writ of *habeas corpus*, or otherwise, until such sum be paid by him or them, or his or their sureties, for want of any form of commitment or other previous proceedings: *Provided*, That sufficient matter shall be made to appear upon the return of each *habeas corpus*, and an examination then be had, to detain him for the causes hereinbefore assigned.

SECTION 4. *And be it enacted*, That if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town, or county where he, she, or they may reside, shall forfeit and pay ten dollars for every day which he, she, or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar shall be recoverable from any seaman or mariner, by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended.

SECTION 5. *And be it enacted*, That if any seaman or mariner, who shall have subscribed such contract as is hereinbefore described, shall absent himself from on board the ship or vessel in which he shall have so shipped without leave of the master or officer commanding on board, and the mate or other officer having charge of the log-book shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself, and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged, at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place. And such damages shall be recovered with costs in any court, or before any justice or justices, having jurisdiction of the recovery of debts to the value of ten dollars or upwards.

SECTION 6. *And be it enacted*, That every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong one-third part of the wages which shall be due to him at every port where such ship or vessel shall unlade and deliver her cargo before the voyage is ended, unless the con-

trary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due according to his contract. And if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and the seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him to show cause why process should not issue against such ship or vessel, her tackle, furniture, and apparel, according to the course of admiralty courts, to answer for the said wages; and if the master shall neglect to appear, or appearing shall not show that the wages are paid or otherwise satisfied, or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty courts in such cases used. And in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall become incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matters in dispute, otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander. But nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or for immediate process out of any court having admiralty jurisdiction wherever any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

SECTION 7. *And be it enacted*, That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall at any port or place desert, or shall absent himself from such ship or vessel without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States (upon the complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common jail of the city, town, or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage,

or till the master shall require his discharge, and then to be delivered to the said master, he paying all the costs of such commitment, and deducting the same out of the wages due to such seaman or mariner.

SECTION 8. *And be it enacted*, That every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness at every port or place where such ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

SECTION 9. *And be it enacted*, That every ship or vessel belonging as aforesaid, bound on a voyage across the Atlantic ocean, shall at the time of leaving the last port from whence she sails have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship bread, for every person on board such ship or vessel, over and besides such other provisions, stores, and live stock, as shall by the master or passengers be put on board, and in proportion for shorter or longer voyages. And in case the crew of any ship or vessel, which shall not have been so provided, shall be put upon short allowance in water, flesh, or bread, during the voyage, the master or owner of such ship or vessel shall pay to each one of the crew one day's wages beyond the wages agreed on for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages.

An act supplementary to the act concerning consuls, vice-consuls, and for the further protection of American seamen, passed February 28, 1803.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That before a clearance be granted to any vessel bound on a foreign voyage the master thereof shall deliver to the collector of the customs a list containing the names, places of birth, and residence, and a description of the persons who compose his ship's company, to which list the oath or affirmation of the captain shall be annexed that the said list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the said collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents. And the said

master shall moreover enter into bond, with sufficient security, in the sum of four hundred dollars, that he shall exhibit the aforesaid certified copy of the list to the first boarding officer at the first port in the United States at which he shall arrive at his return thereto, and then and there also produce the persons named therein to the said boarding officer, whose duty it shall be to examine the men with such list, and report the same to the collector. And it shall be the duty of the collector at the said port of arrival (where the same is different from the port from which the vessel originally sailed) to transmit a copy of the list so reported to him to the collector of the port from which said vessel originally sailed: *Provided*, That the said bond shall not be forfeited on account of the said master not producing to the first boarding officer as aforesaid any of the persons contained in the said list who may be discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, signified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew as aforesaid, or on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the collector.

SECTION 2. *And be it enacted*, That it shall be the duty of every master or commander of a ship or vessel belonging to citizens of the United States, who shall sail from any port of the United States after the first day of May next, on his arrival at a foreign port, to deposit his register, sea-letter, and Mediterranean passport with the consul, vice-consul, or commercial agent, or vice-commercial agent, (if any there be at such port.) And in case of refusal or neglect of the said master or commander to deposit the said papers as aforesaid he shall forfeit and pay five hundred dollars, to be recovered by the said consul, vice-consul, commercial agent, or vice-commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction. And it shall be the duty of such consul, vice-consul, commercial agent, or vice-commercial agent, on such master or commander producing to him a clearance from the proper officer of the port where his ship or vessel may be, to deliver to the said master or commander all of his said papers: *Provided* such master or commander shall have complied with the provisions contained in this act, and those of the act to which this is a supplement.

SECTION 3. *And be it further enacted*, That whenever a ship or vessel belonging to a citizen of the United States shall be sold in a foreign country, and her company discharged, or when a seaman or mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to produce to the consul, vice-consul, commercial agent, or vice-commercial agent, the list of his ship's company, certified as aforesaid, and to pay to such consul, vice-consul, commercial agent, or vice commercial agent, for every seaman or mariner so discharged, being designated on such list as a citizen of the United States, three months' pay over and above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul or

commercial agent to each seaman or mariner so discharged upon his engagement on board of any vessel to return to the United States, and the other remaining third to be retained for the purpose of creating a fund for the payment of the passages of seamen or mariners, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute, and may be in such foreign port. And the several sums retained for such fund shall be accounted for with the treasury every six months by the persons receiving the same.

SECTION 4. *And be it further enacted*, That it shall be the duty of the consuls, vice-consuls, commercial agents, and vice-commercial agents of the United States from time to time to provide for the mariners and seamen of the United States who may be found destitute within their districts, respectively, sufficient subsistence and passage to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give; and that all masters and commanders of vessels belonging to citizens of the United States, and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board their ships or vessels at the request of the said consuls, vice-consuls, commercial agents, or vice-commercial agents, respectively, and to transport them to the port in the United States to which such ships or vessels may be bound, on such terms, not exceeding ten dollars for each person, as may be agreed between the said master and consul or commercial agent; and the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several abilities: *Provided*, That no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every one hundred tons burthen of the said ship or vessel on any one voyage. And if any such captain or master shall refuse the same on the request or order of the consul, vice-consul, commercial agent, or vice-commercial agent, such captain or master shall forfeit and pay the sum of one hundred dollars for each mariner or seaman so refused, to be recovered for the benefit of the United States in any court of competent jurisdiction. And the certificate of any such consul or commercial agent, given under his hand and official seal, shall be *prima facie* evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty aforesaid.

SECTION 5. *And be it further enacted*, That the seventh and eighth sections of the act entitled "An act concerning consuls and vice-consuls" be, and the same are hereby, repealed; and that the Secretary of State be authorized to reimburse the consuls, vice-consuls, commercial agents, or vice-commercial agents, such reasonable sums as they may heretofore have advanced for the relief of seamen, though the same should exceed the rate of twelve cents a man per diem.

SECTION 6. *And be it further enacted*, That it shall and may be lawful for every consul, vice-consul, commercial agent, or vice-commercial agent of the United States to take and receive for every certificate of discharge of any seaman or mariner in a foreign port fifty cents, and for commission on paying and receiving the amount of

wages payable on the discharge of seamen in foreign ports two and a half per centum.

SECTION 7. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent shall falsely and knowingly certify that property belonging to foreigners is property belonging to citizens of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for any term not exceeding three years.

SECTION 8. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent shall grant a passport or other paper certifying that any alien, knowing him or her to be such, is a citizen of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding one thousand dollars.

SECTION 9. *And be it further enacted*, That all powers of attorney executed after the thirtieth day of June next, in a foreign country, for the transfer of any stock of the United States, or for the receipt of interest thereon, shall be verified by the certificate and seal of a consul, vice-consul, commercial agent, or vice-commercial agent, if any there be at the place where the same shall be executed, for which the person giving the certificate shall receive fifty cents.

An act in addition to several acts regulating the shipment and discharge of seamen, and the duties of consuls, passed July 20, 1840.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, as follows:

1. The duplicate list of the crew of any vessel bound on a foreign voyage, made out pursuant to the act of Feb. 28, 1803, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

2. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made a true and certified copy of the shipping articles, which shall be written in a uniform hand, without erasure or interlineations, which shall be duly certified as authentic, and containing all the names of the crew borne on the list above named.

3. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

4. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes, and the provisions of the law which guard the rights of mariners.

5. Any consul of the United States, and in case there is none resi-

dent at a foreign port, or he is unable to discharge his duties, then any commercial agent of the United States authorized to perform such duties, may, upon the application of both the master and any mariner of the vessel under his command, discharge such mariner if he thinks it expedient, without requiring the payment of three months' wages under the provisions of the act of 28th February, 1803, or any other sum of money.

6. Any consul or commercial agent may also, on such joint application, discharge any mariner on such terms as will, in his judgment, save the United States from the liability to support such mariner, if the master gives his voluntary assent to such terms, and conform thereto.

7. When a mariner is so discharged, the officer discharging him shall make an official entry thereof upon the list of the crew and the shipping articles.

8. Whenever any master shall ship a mariner in a foreign port he shall forthwith take the list of his crew and the duplicate of the shipping articles to the consul, or person who discharges the duties of the office at that port, who shall make the proper entries thereon, setting forth the contract and describing the person of the mariner, and thereupon the bond originally given for the return of the men shall embrace each person shipped.

9. When any mariner shall complain that the voyage is continued contrary to his agreement, or that he has fulfilled his contract, the consul, or other commercial agent performing like duties, may examine into the same by an inspection of the articles of agreement; and if on the face of them he finds the complaint to be well founded, he shall discharge the mariner, if he desires it, and require of the master an advance beyond the lawful claims of such mariner of three months' wages, as provided in the act of February twenty-eight, eighteen hundred and three. And in case the lawful claims of such mariner are not paid upon his discharge, the arrears shall from that time bear an interest of twenty per centum: *Provided, however.* If the consul or other commercial agent shall be satisfied the contract has expired, or the voyage been protracted, by circumstances beyond the control of the master, and without any design on his part to violate the articles of shipment, then he may, if he deems it just, discharge the mariner without exacting the three months' additional pay.

10. All shipments of seamen made contrary to the provisions of this and other acts of Congress shall be void; and any seaman so shipped may leave the service at any time, and demand the highest rate of wages paid to any seaman shipped for the voyage, or the sum agreed to be given him at his shipment.

11. It shall be the duty of consuls and commercial agents to reclaim deserters, and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner.

12. If the first officer, or any officer, and the majority of the crew of any vessel, shall make complaint in writing that she is in an un-

suitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been during the voyage, sufficient and wholesome, thereupon, in any or like cases, the consul, or commercial agent who may discharge any duties of a consul, shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall in their report state what defects and deficiencies, if any, they find to be well founded, as well as what, in their judgment, ought to be done to put the vessel in order for the continuance of the voyage.

13. The inspectors so appointed shall have full power to examine the vessel, and whatever is on board of her, as far as is pertinent to their inquiry, and also to hear and receive any other proofs which the end of justice may require; and if, upon a view of the whole proceedings, the consul or other commercial agent shall be satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval, and if he dissents, shall also certify his reason for so dissenting.

14. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consul or other commercial agent approves of such finding, he shall discharge such of the crew as require it, each of whom shall be entitled to three months' pay in addition to his wages to the time of his discharge; but if, in the opinion of the inspector, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall in reasonable time remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; otherwise they shall, upon their request, be discharged, and receive each one month's wages in addition to the pay up to the time of discharge.

15. The master shall pay all such reasonable charges in the premises as shall be officially certified to him under the hand of the consul or other commercial agent; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul or other commercial agent directing the inquiry may officially certify.

16. The crew of any vessel shall have the fullest liberty to lay their complaints before the consul or commercial agent in any foreign port, and shall in no respect be restrained or hindered therein by the master or any officer, unless some sufficient and valid objection exists against their landing; in which case, if any mariner desire to see the consul or commercial agent, it shall be the duty of the master to acquaint him with it forthwith, stating the reason why the mariner is not permitted to land, and that he is desired to come on board;

whereupon it shall be the duty of such consul or commercial agent to repair on board and inquire into the causes of complaint, and to proceed thereon as this act directs.

17. In all cases where deserters are apprehended the consul or commercial agent shall inquire into the facts, and if satisfied that the desertion was caused by unusual or cruel treatment the mariner shall be discharged, and receive, in addition to his wages to the time of the discharge, three months' pay; and the officer discharging him shall enter upon the crew list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and subscribe his name thereto officially.

18. If any consul or commercial agent shall neglect or omit to perform seasonably the duties hereby imposed upon him, or shall be guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby, and for all malversation and corrupt conduct in office he shall be liable to indictment, and on conviction by any court of competent jurisdiction shall be fined not less than one nor more than ten thousand dollars, and be imprisoned not less than one nor more than five years.

19. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this act, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby, in damages, and shall, in addition thereto, be liable to pay a fine of one hundred dollars for each and every offence, to be recovered by any person suing therefor in any court of the United States in the district where such delinquent may reside or be found.

20. It shall be the duty of the boarding officer to report all violations of this act to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury, and to the attorney of the United States in his district.

An act in amendment of the acts for the punishment of offences against the United States, approved March 3, 1835.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any one or more of the crew of any American ship or vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, shall unlawfully, wilfully, and with force. or by fraud, threats, or other intimidations, usurp the command of such ship or vessel from the master or other lawful commanding officer thereof, or deprive him of his authority and command on board thereof, or resist or prevent him in the free and lawful exercise thereof, or transfer such authority and command to any other person not lawfully entitled thereto, every such person so offending, his aiders or abettors, shall be deemed guilty of a revolt or mutiny and felony, and shall, on conviction thereof, be punished by fine not exceeding two thousand dollars, and by imprisonment and confinement to hard labor

not exceeding ten years, according to the nature and aggravation of the offence. And the offence of making a revolt in a ship which now is, under and in virtue of the eighth section of the act of Congress passed the thirteenth day of April, in the year of our Lord one thousand seven hundred and ninety, punishable as a capital offence, shall, from and after the passage of the present act, be no longer punishable as a capital offence, but shall be punished in the manner prescribed in the present act, and not otherwise.

SEC. 2. *And be it further enacted*, That if any one or more of the crew of any American ship or vessel on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, shall endeavor to make a revolt or mutiny on board such ship or vessel, or shall combine, conspire, or confederate with any other person or persons on board to make such revolt or mutiny, or shall solicit, incite, or stir up any other or others of the crew to disobey or resist the lawful orders of the master or other officer of such ship or vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust therein, or shall assemble with others in a tumultuous and mutinous manner, to make a riot on board thereof, or shall unlawfully confine the master or other commanding officer thereof, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.

SEC. 3. *And be it further enacted*, That if any master or other officer of any American ship or vessel on the high seas, or any other waters within the admiralty or maritime jurisdiction of the United States, shall, from malice, hatred, and revenge, and without justifiable cause, beat, wound, or imprison any one or more of the crew of such ship or vessel, or withhold from them suitable food or nourishment, or inflict upon them any cruel and unusual punishment, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both according to the nature and aggravation of the offence.

SEC. 4. *And be it further enacted*, That whenever any person indicted for any offence against the United States, whether capital or otherwise, shall upon his arraignment stand mute, or will not plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty, on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party shall plead not guilty, or such plea shall be entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury. And in all trials in capital cases, if the party indicted shall peremptorily challenge above the number of jurors allowed by law, such excess of challengers shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if the said challenges had not been made.

SEC. 5. *And be it further enacted*, That whenever any person shall be convicted of any offence against the United States which is punishable by fine and imprisonment, or by either, it shall be lawful for

the court by which the sentence is passed to order the sentence to be executed in any house of correction, or house of reformation for juvenile delinquents, within the State or district where such court is holden, the use of which shall be allowed and authorized by the legislature of the State for such purpose, and the expenses attendant upon the execution of such sentence shall be paid by the United States.

We, the undersigned, late mariners on board the on her late voyage, described on the other side of this instrument, and now performed to this place of payment, do hereby, each one for ourselves, with our signatures, acknowledge to have received of, agent or owner of said , the full sum hereunder set against our names; being in full amount of our wages for our services, and all demands for *assault and battery, or imprisonment*, of whatever name or nature, against said , her owners or officers, to the day or date hereunder also set against our names.

Names	Amount	Amount in writing.	Place and date of payment	Signatures and seals	Witness to signing.

List of persons composing the crew of the bark Kate of New York, whereof is master F. Otto, bound for Cape Palmas and a market.

Names.	Places of birth.	Places of residence.	Of what country citizens or subjects.	DESCRIPTION OF THEIR PERSONS.			
				Aged.	Height.	Complexion.	Hair.
					Ft. In.		
O. Raven	New York.	New York.	United States.	36	5 11	D'k	D'k brown.
Fre'k Stevens	do.	do.	do.	33	5 8	do.	Bl'k.
John Anderson	Maine.	do.	do.	30	5 8	L't.	Bro
Jas. Seymour	New York.	do	do.	29	5 6	do.	do.
Douglas Burns	do.	do.	do.	24	5 8	do.	L't.
Frank George	Louis'a	do.	do.	25	5 4	D'k.	Bl'k.
F'k Antoine	New York.	do.	do.	34	5 5	do.	Bl'k.
Chs Seymour	do.	do.	do.	26	5 8	do	D'k brown.
Joseph Mannel	Mass	do.	do.	24	5 8	do.	Bl'k.
Jse. Leverage	New York.	do.	do.	28	5 11	do.	D'k brown.
Peter Louverick	Mass.	do.	do.	18	5 5	do.	D'k.
Martin Kent	Mass	do.	do.	37	5 6	L't.	L't
Thos. Pritchard	Louis'a	do.	do.	27	5 4	do.	Bro.

171 I, F. Otto, do solemnly, sincerely, and truly swear that the within list contains the names of the crew of the bark Kate, together with the places of their birth and residence, as far as I can ascertain the same.

Sworn this day of Sept., 1860, before me .
Collector, New York.

I do certify that the within is a true copy of the list of the crew of the Kate, of New York, whereof Otto is master, taken from the original on file in this office.

[SEAL.] Given under my hand and seal of office, at the custom-house, this day of Sept., in the year of our Lord one thousand eight hundred and sixty.

I do hereby further certify that the within named persons who compose the company of the above-mentioned bark, whereof Otto is at present master, have produced to me proof in the manner directed in the act entitled "An act for the relief and protection of American seamen." And pursuant to the said act and to the act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American seamen, I do hereby certify that the said are citizens of the United States of America.

[SEAL.] Given under my hand and seal of office this day of of Sept., 1860.

172 EXHIBIT 25.

Not in manifest on Exhibit No. 22.

1 bbl. pigs' feet.
1 roll of zinc.
2 bbls. molasses.
1 bbl. of beach sand.
1 bbl. of tar.
2 kegs lard.
3 boxes of ketchup.
5 boxes of olives.
1 box of olive oil.
5 bbls. of beans.
6 bbls. of peas.
2 bbls. of lime.
1½ bbl. of pitch.
1 bbl. crushed sugar.
5 bbls. corn meal.
2 cases of assorted pickles.
4 bbls. flour.
1 bath tub.
1 boat.
5 boxes vermicelli.
5 boxes mackaroni.
3 boxes preserves.
1 bbl. of butter.
1 bbl. of pigs.
1 box cherkins.
1 box of tallow.
3 bbls. of rice.
10 bbls. of potatoes.
3 bbls. of feed.
2½ bbls. of mackerel.
173 1 can of salmon.
1 bbl. of onions.
6 shovels.

S. S. W.

Not on manifest.

1 bbl. sugar.
4 coils of rope.
2 pkgs. of duck.
½ box of tea.
1 sack of salt.
1½ sack of coffee.
4 cases of sugar.
3½ bbls. dried apples.
1 bbl. of salt tongues.
7 hams.
4½ boxes raisins.
5 globe lanterns.
12 pewter pitchers.
1 box saleratus.
1 box ketchup.
1 doz. of tin cups.
18 boxes wine.
10 bbls. beef.
3 bbls. of pork.
3 boxes of preserved meat.
3 water casks.
21 bbls. of bread.

S. S. W.

174 DISTRICT AND PORT OF NEW YORK:

I, , do solemnly, sincerely, and truly swear that the within manifest contains a full, just, and true account of all the goods, wares, and merchandise shipped by , on board the within named vessel, and that the quantities and values of each article are truly stated, according to their actual cost or the values which they truly bear in this port at this time. And I further swear that the said merchandise is truly intended to be exported to , so help me God.

Sworn to this 186 , before me.

Collector.

Manifest of part of cargo shipped by Jose Hernandez, on board the bark Kate, whereof F. Otto is master, for Cape Palmas and leeward ports W. C. of Africa, New York, July 3d, 1860.

Marks.	Nos.	Packages and contents.	Quantities—lbs., gallons, &c.	Value of domestic mchdse.	Value of foreign mdse. in bond.	To be landed at—
A. R	100	One hundred pipes rum	100 pipes.			
T	200	Two hundred box herring	200 boxes.	$60	$3,800	
"	5	Five cask codfish	3,350 lbs.	100		
R 381	12	Twelve boxes cheese	131 "	20		
"	4	Four barrels ale and cider	32 doz.	48		
"	6	Six boxes wines or liquors	boxes.	58		
"	2	Two boxes champagne	4 doz.	24		
T	110	One hundred and ten half barrels rice	12,088 lbs.	570		
R	12	Twelve box gin	12 boxes.	60		
T	10	Ten barrels beef	10 bbls.	140		
"	5	Five do. pork	5 "	77		
"	10	Ten kegs lard	544 lbs.	82		
R	6	Six half barrels beef (family)	6 bbls.	60		
"	1	One barrel hams	178 lbs.	24		
"	1	One " smoked beef	150 "	15		
T 382	6	Six boxes iron pots	2,432 "	243		
"	30	Thirty iron pots	450 "	32		
"	100	One hundred pails	100 pails.	18		
R	2	Two boxes a la mode beef	2 boxes.	12		
T	82	Eighty-two water casks, for oil	82 casks.	522		
"	6	Six bundles hoop iron	6 bdles.	14		
R R	2	Two bags walnuts and almonds	70 lbs.	19		
"	1	One barrel salmon	1 bbl.	4		
"	2	Two tins biscuit	38 lbs.	294		
T	80	Eighty barrels navy bread	8,383 "	12		
"	20	Twenty tins crackers	240 "	15		
R 383	3	Three barrels vinegar	3 bar.	15		
"	1	One keg sausages	100 lbs.			
K C	8	Eight boxes drugs and medicines	8 boxes }	282		
"	1	One keg ..... do	1 keg. }			
	5,000	Five thousand feet lumber	5,000 feet.	90		
R	12	Twelve boxes cognac, French	12 bxs.	96		
"	12	do. do. cordials	12 bxs.	98		
"	25	Twenty-five boxes assorted vegetables	27 boxes.	212		
"	2	Two boxes jellies				
T	40	Forty half barrels flour	40 "	140		
"	15	Fifteen boxes soap	375 lbs.	27		
"	10	Ten do. candles	300 "	90		
"	30	Thirty half barrels beef	30 bar. }	3,586		
384	4	Four kegs tongues	4 kegs. }	150	G. U.	
				3.736		

JOSE HERNANDEZ.

175 EXHIBIT No. 28.

JULY 12, 1856.

Minutes of Dist. Clerk.

The grand jury coming into court, present bill U. S. *vs.* Henrico Da Costa for fitting out brigantine (640) Braman, to be engaged in slave trade. and U. S. *vs.* Henrico Da Costa and others, for causing brigantine (643) Braman to be sent into slave trade.

Def't in first cause being called in open court, and appears in open court. On motion of counsel for prisoner, recognizance heretofore given in case cancelled. On motion of dist. att'y, ordered Da Costa find bail, to answer indict. at present term of court, $10,000, and that an officer accompany him to procure bail.

Def't being brought into court, are arraigned, and pleads not guilty, with liberty to withdraw plea and demur to indict.

JULY 19, 1856.

Second cause, 643.

On motion of counsel for def't, Da Costa ordered to be held to bail in $7,000 for his appearance in Sept. term.

640, 643. AUG'T 5, 1856.

On motion of counsel for def't, ordered that in filing consent of sureties in this cause, the recognizance heretofore taken herein be extended to Sept. term.

OCT. 4, 1856.

176 640. Da Costa and one surety appear in court, and consent to remain bound by their recognizance until next term of court.

OCT. 6, 1856.

643. Da Costa and surety called; not appearing, recog. forfeited.

640. OCT. 27, 1856.

Braddock, surety, comes into court, and surrendered body of Da Costa, and surrendered to custody of marshal.

NOV. 18, 1856.

643. Trial set down for Dec. 20.

DEC. 20, 1856.

643. Def't called. Does not appear.

177 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 24th day of July, in the year of our Lord one thousand eight hundred and fifty-six, before me, George

Betts, one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Henrico De Costa, and severally acknowledged themselves to owe to the United States—that is to say, the said Henrico De Costa the sum of three thousand five hundred dollars, the said Jesse S. Bradish the sum of three thousand five hundred dollars, and the said the sum of dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to wit:

Whereas, at the stated term of the district court of the United States for the southern district of New York, held on the first Túesday of July, in the year of our Lord one thousand eight hundred and fifty-six, the grand inquest of the United States, within and for the district aforesaid, found a true bill of indictment against the said Henrico De Costa, for having on the ninth day of June, A. D. 1856, for himself, as owner or factor, built, fitted, equipped, loaded, prepared, and sent away a brigantine called the Braman, or aided and abetted in building, fitting, equipping, loading, preparing, or sending away the said vessel, with intent to employ said vessel in the trade and for the purpose of procuring a large number of negroes, mulattoes, or persons of color from Africa, to be transported to a certain place, to the jurors aforesaid unknown, to be held, sold, and otherwise disposed of as slaves, and to be held to service and labor, against the peace of the United States and their dignity, and against the form of the statute in such case made and provided.

And whereas the said Henrico De Costa has been brought before the said district court to answer the indictment aforesaid:

178 And whereas the said district court did thereupon order the said Henrico De Costa to find sufficient bail, in the sum of three thousand five hundred dollars, for his appearance at the next district court of the United States of America for the southern district of New York, to be holden at the City Hall, in the city of New York, on the first Tuesday of August, in the year one thousand eight hundred and fifty-six, to answer the indictment aforesaid; and that in default of finding such bail, the said Henrico De Costa should stand committed for trial:

Now, therefore, the condition of this recognizance is such, that if the said Henrico De Costa shall personally appear at the next district court of the United States of America for the southern district of New York, to be holden at the City Hall, in the city of New York, on the first Tuesday of August, in the year of our Lord one thousand eight hundred and fifty-six, at 11 o'clock in the forenoon of that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart

the said court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

HENRIQUE DE COSTA.
JESSE A. BRADDICK.

Acknowledged before me the day and year first above written.
GEO. F. BETTS, *U. S. Com'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jesse A. Braddick of No. 255, Seventh st., and , of No. , in the city of New York, being duly sworn, depose and say, and each for himself, saith that he is worth the sum of seven thousand dollars, over and above all his just debts and liabilities.

JESSE A. BRADDICK.

Sworn to this 24th day of July, A. D. 185 , before me.
GEO. F. BETTS.

179 Ex. 29. U. S. district court. The United States of America *vs.* H. De Costa. Recognizance to appear and answer. Jno. McKeon, U. S. attorney. Filed 2d July, 1856.

180 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 24th day of July, in the year of our Lord one thousand eight hundred and fifty-six, before me, , one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Henrico De Costa, and severally acknowledged themselves to owe to the United States—that is to say, the said Henrico De Costa the sum of thirty-five hundred dollars, the said Joseph Varona the sum of thirty-five hundred dollars, and the said the sum of dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to wit:

Whereas, at the stated term of the district court of the United States for the southern district of New York, held on the first Tuesday of July, in the year of our Lord one thousand eight hundred and fifty-six, the grand inquest of the United States, within and for the district aforesaid, found a true bill of indictment against the said Henrico De Costa, for having, on the seventh day of June, A. D. 1856, as owners, caused to be sent away from the port of New York a brigantine called the Braman, with the intent to employ said vessel in the trade and for the purpose of procuring negroes, mulattoes, or persons of color, from a certain foreign country, to wit, Africa, to be

transported to a certain place, to the jurors aforesaid unknown, to be held, sold, or otherwise disposed of as slaves, and to be held to service or labor; and also for having builded, fitted, equipped, loaded, and otherwise prepared and sent away the said ship, with intent aforesaid, against the peace of the United States and their dignity, and against the form of the statute in such case made and provided:

And whereas the said Henrico De Costa has been brought before the said district court, to answer the indictment aforesaid:

181 And whereas the said district court did thereupon order the said Henrico De Costa to find sufficient bail, in the sum of three thousand five hundred dollars, for his appearance at the next district court of the United States of America for the southern district of New York, to be holden at the City Hall, in the city of New York, on the first Tuesday of August, in the year one thousand eight hundred and fifty-six, to answer the indictment aforesaid; and that in default of finding such bail, the said Henrico De Costa should stand committed for trial:

Now, therefore, the condition of this recognizance is such, that if the said Henrico De Costa shall personally appear at the next district court of the United States of America for the southern district of New York district, to be holden at the City Hall, in the city of New York, on the first Tuesday of August, in the year of our Lord one thousand eight hundred and fifty-six, at 11 o'clock in the forenoon of that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart the said court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

HENRICO DE COSTA.
JOSEPH VARONA.

Acknowledged before me the day and year first above written.
GEO. F. BETTS, *U. S. Com'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph Varona, of Ravenswood, L. I., being duly sworn, depose and say that he is worth the sum of seven thousand dollars, over and above all his just debts and liabilities.

JOSEPH VARONA.

Sworn to this 24th day of July, A. D. 1856, before me.
GEO. F. BETTS, *U. S. Com'r.*

182 U. S. dist. court. The United States of America *vs.* H. De Costa. Recognizance to appear and answer. Jno. McKeon, U. S. attorney. Filed 24th July, 1856.

183 *Report and manifest of the cargo laden at the port of New York, on board the schooner Josephine, whereof Locke is master, bound for Sierra Leone, St. Thomas, Rio Zaire, and W. C. Africa. New York, June,* 1860; 10 *men; tons,* $212\frac{51}{95}$.

Marks.	Nos.	Packages and contents.	Quantities—lbs., gallons, &c.	Value of domestic mchdse.	Value of foreign mchdse not dutiable.	Value of foreign mchdse. not in bond.	To be landed at—
A R	.....	100 pipes rum	.....	.....	.....	$3,250	Sierra Leone, St. Thomas, Rio Zaire, and W. C. Africa.
L L	136–138	3 bales dry goods	3,775 yds.	$373			
[N]	279–81	3 do. do	2,608 "	215			
S	49	1 " "	1,765 "	92	$102		
O B R	181–2	2 " "	2,043 "	168			
A A A	22	1 " "	808 "	68			
D	169	1 " "	115 doz.	150			
D P	495	1 " "	981 yds.	80			
[D] D	220	1 " "	835 "	85			
P S	813	1 " "	1,680 "	94			
J	68	1 " "	1,579 "	115			
[z]	4461	1 " "	2,164 "	180			
	338	1 " "	916 "	75			
	266–333	2 cases "	190 doz.	192			
		24½ bbls. beef	24½ bbls.	246			
		12 boxes candles	360 lbs.	108	403		
		6 " chewing tobacco	715 "	125			
		16 bags coffee	964 "	139			
		1 can butter	48 "	15			
		30 boxes gin	75 gals.	150			
		20 bbls. beans	96 bbls.	151			
		12¼ bbls. crushed sugar	600 lbs.	67			
		43 do. rice	10,181 "	487			
		24½ do. flour	.....	86			
		60 do. navy bread	2,730 lbs.	140			
		24 boxes crackers	168 "	28			
		20 do. brandy	50 gals.	160			
		12 do. soap	480 lbs.	33	404		
		10¼ bbls. mess beef	10 brls.	120	.....	.....	Vernon G. Locke.
		4 do. " "	4 "	62			
		4 do. pork	4 "	55			
		6 kegs lard	323 lbs.	46			
		8 cases dry goods	17,331 yds.	1,410			
		1 bale do. do.	358 "	28			
		10 cases guns	201 guns.	480			
		6,000 feet lumber	6 M feet	90			
		82 bdls shooks	82 bdls.	660			
		2 casks hoops	2 casks.				

184 *Master's oath on clearing outward.*

DISTRICT AND PORT OF NEW YORK:

I, V. G. Locke, master of the sch'r Josephine, bound from the port of New York to , do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said sch'r, now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said sch'r previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States; and that if, by distress or other unavoidable accident, it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. And said cargo is truly intended to be landed in the port of Sierra Leone, &c. So help me God.

VERNON G. LOCKE, *C. B. N.*

Sworn to before me this 27th June, 1860.

H. A. CARGILL, *D. Collector.*

189 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 11th day of July, in the year of our Lord one thousand eight hundred and sixty, before me, Charles W. Newton, one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Frederick Otto and Jesse A. Braddick, and severally acknowledged themselves to owe to the United States of America—that is to say, the said Frederick Otto the sum of fifteen hundred dollars, and the said Jesse A. Braddick the sum of fifteen hundred dollars, and the said the sum of dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to wit:

Whereas the said Frederick Otto stands charged on oath, before Charles W. Newton, one of the commissioners duly appointed as aforesaid, with having on the 3d day of July, in the year one thousand eight hundred and sixty, on the high seas, voluntarily served on

board a vessel of the United States, the same being the barque Kate, a vessel then and there employed and made use of in the transportation of slaves from one foreign country or place to another, to wit, from the west coast of Africa to the island of Cuba or some other foreign country:

And upon such charge being made as aforesaid, the said Chas. W. Newton, U. S. com'r, did issue his warrant in due form of law, for the arrest of the said Frederick Otto; and whereas the said Frederick Otto has been brought before the said Charles W. Newton, one of the commissioners aforesaid, to answer to the said charge, and witnesses have been duly examined in relation to said charge in presence of said Frederick Otto, and upon such examination it appearing to the said commissioner that the offence with which the said Frederick Otto stood charged had been committed, and that there was probable cause to believe the said Frederick Otto to be guilty
190 thereof, and the said offence being bailable by the said commissioner, he did thereupon order the said Frederick Otto to find sufficient bail in the sum of fifteen hundred dollars for his appearance at the next dist. court of the United States of America for the southern district of New York, to be holden at the U. S. court buildings, No. 41 Chambers st., in the city of New York, on the first Tuesday of August, in the year one thousand eight hundred and sixty, to answer all such matters and things as should be objected against him; and that in default of finding such bail, the said Frederick Otto should stand committed for trial:

Now, therefore, the condition of this recognizance is such, that if the said Frederick Otto shall personally appear at the next dist. court of the United States of America for the southern district of New York, to be holden at the U. S. court buildings, No. 41 Chambers st., in the city of New York, on the first Tuesday of August, in the year of our Lord one thousand eight hundred and sixty, at 10 o'clock in the forenoon of that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart the said court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

F. OTTO. [SEAL.]
JESSE A. BRADDICK. [SEAL.]

Acknowledged before me, the day and year first above written.

CHAS. W. NEWTON,
U. S. Com'r.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Jesse A. Braddick, of No. 199 Monroe Place, in the city of New York, being duly sworn, depose and say that he is a householder and owner, and that he is worth the sum of three thousand dollars, over and above all his just debts and liabilities.

JESSE A. BRADDICK.

Sworn to this 11 day of July, A. D. 1861, before me.

191 Endorsed : U. S. dist. court. The United States *vs.* Frederick Otto. J. J. Rosevelt, U. S. attorney. Recognizance to appear and answer. Filed the 16 day of July, 1860. Called and forfeited Dec. 29, 1860.

192 To all whom these presents shall come, greeting :

Know ye that we, Benjamin Buck and Alfred Buck, of Baltimore, State of Maryland, sole owners of the bark or vessel called the Kate, of said place, of the burthen of 267$\frac{41}{95}$ tons, or thereabouts, for and in consideration of the sum of ten thousand five hundred dollars lawful money of the United States of America, to us in hand paid, before the sealing and delivery of these presents, by Charles P. Lake, of Brooklyn, State of New York, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid ; ha bargained and sold, and by these presents do bargain and sell, unto the said Lake, his heirs, executors, administrators, and assigns, the whole of the said bark or vessel, together with all and singular the masts, bowsprit, sails, boat anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of the register of which said bark or vessel is as follows, to wit :

193 *Permanent.*

No. . In pursuance of an act of Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Benjamin C. Buck, of Baltimore, State of Maryland, owner of $\frac{1}{2}$
having taken or subscribed the oath required by the said act, and having sworn that he, together with Alfred Buck, of the city and State aforesaid, owner of $\frac{1}{2}$, are the only owners of the ship or vessel called the Kate, of Baltimore, whereof Charles W. Buck is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Baltimore, State of Maryland, in the year eighteen hundred and fifty-three, (1853,) as appears by a certificate of permanent register, No. 29, granted at the port of Baltimore the 15th February, 1854, now surrendered, ownership changed; and said certificate having certified that the said ship or vessel has one deck and three masts, and that her length is one hundred fourteen feet six inches, her breadth twenty-six feet, her depth ten feet three inches, and that she measures two hundred sixty-seven $\frac{41}{95}$ tons; and that she is a barque; has an elliptic stern; no galleries and billet head. And the said Benjamin C. Buck having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of Baltimore.

Given under our hands and seals, at the port of Baltimore, this 10th day of March, in the year one thousand eight hundred and sixty (1860.)

194 To have and to hold the said whole of the said bark Kate, and appurtenances thereunto belonging, unto him, the said Lake, executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of the said executors, administrators, and assigns for ever. And we, the said Benjamin C. Buck and Alfred Buck, have, and by these presents do promise, covenant, and agree for ourselves, our heirs, executors, administrators, to and with the said Lake, heirs, executors, and administrators, and assigns, to warrant and defend the said whole of the said bark Kate, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, we, the said Benjamin C. Buck and Alfred Buck, have hereunto set our hands and seals this 23d day of May, in the year of our Lord one thousand eight hundred and sixty.

BENJAMIN C. BUCK, [SEAL.]
By self, Attorney.
CHARLES W. BUCK,
ALFRED BUCK. [SEAL.]
By CHA'S W. BUCK, *Attorney.*

Sealed and delivered in the presence of—
F. O. MERKLE.

195 STATE OF NEW YORK,
City and County of New York, ss:

Be it known that on the 23d day of May, one thousand eight hundred and sixty, personally appeared before me Chas. W. Buck, attorney for the within-named Benjamin C. Buck and Alfred Buck, and acknowledged the within bill of sale to be their free act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

F. O. MERKLE,
[SEAL.] *Not. Public.*

Recorded May 30th, 1860, at 1½ p. m.

CUSTOM-HOUSE, NEW YORK, COLLECTOR'S OFFICE.

I certify the within bill of sale to be a true copy of the original on record at this office.

Given under my hand and seal of office this 17th day of November, A. D. 1860.

[SEAL.] AUGUSTUS SCHELL, *Collector.*

Endorsed: B'k Kate. Copy bill of sale No. 33. Dk. 23 May, 1860. Bill of sale from to . Exhibit No. 33.

196 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the fourth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, dist. judge.

THE UNITED STATES
vs.
THE BARK KATE, her tackle, apparel, &c., and lading. } 16, 161.

This case having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the said bark Kate, her tackle, apparel, furniture, and lading mentioned in the libel therein, be, and the same are hereby, condemned and forfeited, pursuant to the prayer of the libel, and that the libellants recover their costs in the said action.

And it is further ordered, that unless an appeal be taken from this decree within the time limited and prescribed by the rules of this court, that the clerk issue a writ of venditioni exponas to the
197 marshal of the district, returnable on the fifth day of March, 1862.

(Signed) SAM'L R. BETTS.

198 THE BARK KATE AND CARGO
ad.
THE UNITED STATES. } U. S. district court.

SIR: Please to take notice that the claimant appeals from the decision herein, dated Feb'y 11, 1861.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
Proctors for App'l't and Cl'm't.

To Hon. J. J. ROOSEVELT, *U. S. Att'y.*
GEO. J. BETTS, Esq., *Clerk.*

Endorsed: 16, 161. U. S. dist. court. Bark Kate, &c., *ad.*
199 The United States. No. of appeal. Beebe, Dean & Donohue, proctor for cl'm't. Filed 14 Feb'y, 1861.

200 *To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:*

The petition of appeal of Charles P. Lake, claimant of the bark Kate as owner, and the cargo thereof as owner, respectfully shows: That on the first day of October, 1860, the United States of America filed their libel in the district court of the United States for the southern district of New York against said bark Kate, her tackle, apparel, &c., and cargo, praying for the condemnation thereof for the reasons and causes set out in the libel; that the said vessel and cargo were arrested on said libel, and the petitioner duly appeared and claimed said vessel and cargo as aforesaid, and filed his answer to said libel; that such proceedings were thereupon had that the said court, having heard the said cause, did, on the fourth day of February, 1861, order and decree that the said vessel, her tackle,
201 &c., and cargo, should be condemned as forfeited to the United

States, which decree, and every part thereof, the petitioner alleges is erroneous.

Wherefore the petitioner prays that the said circuit court may proceed to hear said cause anew on new allegations and proofs and the proofs already in, and to reverse the said decree and every part thereof, and to restore the petitioner to the rights he has lost in the premises.

BEEBE, DEAN & DONOHUE, *for App'l's.*

Endorsed: 16, 161. Circuit court of the United States of America for the southern district of New York.

Bark Kate *ex rel.* Charles P. Lake *ads.* United States. Petition of appeal.

202 BEEBE, DEAN & DONOHUE, *Proct'rs for App'l'nt.*

Service of within petition of appeal is hereby admitted. Dated Feb. 25, 1861.

J. J. ROOSEVELT, *U. S. Dis. Att'y.*

Filed Feb'y 25, 1861.

J. J. ROOSEVELT, *U. S. D. Att'y.*

Filed 25 Fe'y, 1861.

203 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE UNITED STATES, libl'nt and appellees,
vs.
THE BARK KATE, her tackle, &c., and lading,
Chas. P. Lake, claim'nt and appellant.
} Bond for costs.

Know all men by these presents that we, Henry M. Bearns and Welcome R. Beebe, are held and firmly bound unto the above-named libellants and appellees in the sum of two hundred and fifty dollars, to be paid to the said libellant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 25th day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Whereas the above-named claimant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this

obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HENRY M. BEARNS. [L. S.]
W. R. BEEBE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 25 day of February, 1861, before me.

GEO. F. BETTS,
U. S. Com'r.

204 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry M. Bearns and Welcome R. Beebe, being duly sworn, each depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

HENRY M. BEARNS.
W. R. BEEBE.

Sworn to, this 25 day of Feb'y, A. D. 1861, before me.

GEO. F. BETTS,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved. Dated N. Y., 25th Feb'y, 1861.

_____,
Dist. Judge.

Endorsed: Vol. 1, page 161. U. S. circuit court. The United States, libl'nts and appellees, vs. The bark Kate, her tackle, &c., and lading. Chas. P. Lake, claim'nt and appl'nt. Bond for costs on appeal. Beebe, Dean and Donohue, appellant's proctors. Filed this 25 day of Feb'y, 1861.

205 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the 24th day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES, Appellee,
vs.
THE BARK "KATE," her tackle, &c., Appellant.

This cause having been heard on the pleadings and proofs, and argued by Charles Donohue, esq., for the appellant, and E. Delafield Smith, esq., for appellee, and due deliberation being had, it is now ordered, adjudged and decreed, that the decree of the district court herein be affirmed.

Endorsed: The United States vs. The bark Kate. Decree of affirmance. Filed November 24, 1862.

206 To the honorable the Supreme Court of the United States:

The petition of Charles P. Lake, claimant of the bark Kate, her tackle, apparel, and furniture and cargo, appellant, respectfully shows:

That the United States on the first day of October, 1862, filed their libel against the bark Kate, her tackle, apparel and furniture, and lading, praying, for the reasons stated, that the said vessel, her tackle, apparel and furniture, and lading, might be condemned; that the claimant duly appeared and put in bond for said vessel, and filed his answer to the libel; that the said district court afterwards decide and decree that the said vessel, her tackle, apparel, and furniture and lading, was forfeited to the United States, and that your petitioner duly appealed from said decree to the circuit court of the United States for the southern district of New York, in the second circuit, and that such proceedings were thereupon had that afterwards, to wit, on the twenty-fourth day of December, 1862, the said decree of the district court was by the decree of the circuit court affirmed;

207 that your petitioner is advised and believes that said decree is in all things erroneous, and should be reversed, and he appeals therefrom to the honorable the Supreme Court of the United States, and prays that your honorable court would be pleased to proceed to hear said cause anew on the pleadings and proofs already in, and such other proofs as may be adduced, and that said judgment may be reversed, annulled, and altogether held for nothing, and the petitioner restored to all the right he has lost in the premises.

New York, Dec. 4, 1862.

BEEBE, DEAN & DONOHUE
Proctors for Appellant.

Filed Dec. 4, 1862.

208 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE BARK KATE, her tackle, &c., and lading, Chas. P. Lake, Claimant and Appellee,
vs.
THE UNITED STATES OF AMERICA, Lib'nt & Appellees.
} Bonds for costs.

Know all men by these presents, that we, Charles P. Lake and George D. Vogel, are held and firmly bound unto the above-named libellants, the United States, in the sum of two hundred and fifty dollars, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 4th day of December, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas the above-named claimant has prosecuted an appeal to the Supreme Court of the United States, to be held at Washington, in the District of Columbia, to reverse the decree rendered in the above entitled suit, by the judge of the circuit court of the United States for the southern district of New York, second circuit:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHARLES P. LAKE,
By GEORGE D. VOGEL. [L. S.]
GEORGE D. VOGEL. [L. S.]

Sealed and delivered, and taken and acknowledged, this 4 day of Dec., 1862, before me.

GEO. W. MORTON,
U. S. Commissioner.

209 UNITED STATES OF AMERICA,
Southern District of New York, ss:

George D. Vogel, being duly sworn, doth depose and say that he resides at 72 East 40 st., and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

GEORGE D. VOGEL.

Sworn to, this 4 day of Dec., A. D. 1862, before me.
GEORGE W. MORTON,
U. S. Commissioner.

From personal inquiry made by me, I certify that the above named party is sufficient security for the amount of the within bond.
December 4, 1862.

SAM'L R. BETTS.

Endorsed: U. S. Supreme Court. Bk. Kate & cargo *ads* United States. Bond for costs on. Beebe, Dean and Donohue, proctor. Filed this 4 day of Dec., 1862.

210 By the Hon. Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the United States of America:

Whereas Charles P. Lake lately appealed to the Supreme Court of the United States, for the southern district of New York, second circuit, from a decree rendered by the judge of the circuit court of the United States for the southern district of New York, made in favor of you, The United States of America against the bark Kate, her tackle, apparel, and cargo, lading, &c., Charles P. Lake, and has filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the eighteenth day of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the .

SAMUEL R. BETTS.

Endorsed : Citation on appeal. Filed Dec. 4th, 1862. I admit due service of the within citation, dated Dec. 4th, 1862.

E. DELAFIELD SMITH,
Proctor for Appellant.

619

Mr Justice Miller

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 127.

THE BARK KATE, her tackle, &c., and lading, Charles P. Lake, Claimant and Appellant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 127.

THE BARK KATE, her tackle, &c., and lading, Charles P. Lake, Claimant and Appellant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

On the first of October, 1860, the United States district attorney filed in the United States district court, at New York, a libel of information against *The Bark Kate*, her tackle, apparel, and furniture, and lading, in a case of seizure and forfeiture, alleging—

First. The equipment, loading, and other preparation of said vessel, within the port of New York, for the purpose of carrying on a trade in slaves, &c., within the terms and contrary to the provisions of the first section of the act of Congress of 22d March, 1794, &c.; and,

Second. The fitting, equipment, loading, and other preparation of said vessel in the port of New York, for the like purpose, within the terms and contrary to the provisions of the second section of the act of 20th April, 1818, &c.

A monition having issued from the district court, the bark, her tackle, &c., and lading, were attached on the first of October, 1860.

On the 13th of October, 1860, Charles P. Lake, alleging himself to be owner of the vessel and carrier of the cargo, intervened for the interest of himself as owner and carrier, and made claim to the said vessel, her tackle, &c., averring that he was in possession of the vessel, her tackle, &c., when

they were attached, and that he was the true and *bona fide* owner of the vessel, her tackle, &c., and carrier of the cargo, and true and lawful bailee thereof as owner and carrier.

On the 4th of February, 1861, the district court, having heard the evidence and arguments, decreed condemnation and forfeiture of the bark, her tackle, &c., and lading, pursuant to the prayer of the libel, from which decree the claimant appealed to the United States circuit court, and that court, on the 24th of November, 1862, affirmed the decree of the district court; whereupon the claimant appealed to this court.

On the 3d of July, 1860, on the application of Henry C. Smith, a custom-house broker, a clearance was obtained at the New York custom-house for the bark Kate, "bound for Cape Palmas and ports, west coast of Africa, merchandise and stores." (Rec., p. 70.) On the same day she left the port of New York, and had proceeded on her voyage a short distance when Captain Faunce, of the revenue cutter Harriet Lane, seized and brought her back to that port.

On the 6th of July, 1860, the United States district attorney filed a libel of information in the United States district court against her, similar to that which begins the present proceeding, in accordance with which she was attached, on monition, on the 6th of July, 1860, and Charles P. Lake intervened as claimant of vessel and cargo. A stipulation for costs and value of vessel, &c., and cargo, having been offered and approved, the court, on motion of the proctors for claimant, on the 30th of August, 1860, directed the discharge of the vessel, &c., and cargo. (Rec., pp. 76, 86.)

Whilst these proceedings were occurring her cargo had been discharged and placed in a public warehouse. But after the order of the court of August 30, 1860, the original cargo was reloaded on the vessel, and she was again made ready for sea, (Rec., pp. 10, 11,) and on the 14th of September, 1860, application was again made to the custom-house for a clearance for the vessel, "bound for Cape Palmas and leeward ports of the west coast of Africa," the manifest of cargo presented at the custom-house being, with slight variation, the same as that on which the first clearance of 3d July had been obtained. (Rec., pp. 43, 101.)

To arrest this second attempt to put to sea for the unlawful purpose charged in the libel, the vessel was again seized by the collector, (Rec., p. 23,) and the proceedings for her forfeiture, now before the court, were commenced as above stated.

On the 17th of September, 1860, after her second seizure and prior to the filing of the second libel, the inspector of the customs, by order of the naval officer, discharged and examined the cargo of the Kate, which was found to include all that was reported in the manifest, and a large and various assortment of articles usually found on a slaver, which were not manifested. (Rec., pp. 26, 75, 76, 101, 119, 120.)

The Kate was, therefore, fitted, equipped, loaded, and otherwise prepared, within the port of New York, for a voyage avowedly to a place or places on the western coast of Africa, the coast on which the slave trade is well known to be prosecuted.

The first section of the act of 22d March, 1794, (1 Stat. at L., 347,) and the second section of the act of 20th April, 1818, (3 Stat. at L., 450,) the violation of which the libel in this case alleges, both subject to condemnation and forfeiture any ship or vessel in the predicament of the Kate, as above stated, provided she were fitted, equipped, loaded, or otherwise prepared *for the purpose* of carrying on any trade or traffic in slaves to any foreign country; or procuring therefrom the inhabitants thereof to be transported to any foreign country to be sold and disposed of as slaves; or of procuring any negro, mulatto, or person of color therefrom to be transported to any port or place, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor.

The question in this case, therefore, is, whether the bark Kate was fitted, &c., *for the purpose* of engaging in the slave trade, and that intent and purpose is the whole subject of inquiry.

What constitutes the substance of the offence, and that when the progress of the suspected enterprise has become indicative of its true purpose, the offence is complete and the forfeiture incurred, has been settled by this court:

"It is the preparation of the vessel and the purpose for

which she is employed that constitute the offence and draw after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches." (The Emily and Caroline, 9 Wheat., 381; The Plattsburgh, 10 Wheat., 133; U. S. *vs.* Gooding, 12 Wheat., 460.)

Whether, in this case, the intent and purpose was to take a slave cargo on board, or only to carry the outward cargo to supply the means of procuring it for another vessel, to be herself the principal trader or only a tender or supply ship at any stage of the traffic, the offence is equally complete under the statute. For it prohibits, not merely the transportation of slaves, but the being employed in the business of the slave trade. (The Alexander, 3 Mass., 175; U. S. *vs.* The Catharine, 2 Paine, 721; U. S. *vs.* Morris, 14 Pet., 464.)

We affirm, then, that the character of the preparations for the projected voyage of the Kate was such as to indicate clearly the purpose of that voyage to be the carrying on a trade in slaves.

It is obvious that the projectors of the voyage had determined to give it the appearance of an honest and lawful enterprise. This was necessary to escape the vigilance of the law officers, then aroused by the boldness and success of the slave traders in projecting and setting on foot their guilty expeditions from New York. We are thus compelled to discover the real purpose of the voyage from acts and preparations carefully designed to conceal it. But it is impossible so to cover crime with the garb of innocence as to conceal entirely its features, and, when discovered, their natural repugnance makes the imposture more glaring. The incongruities which the attempt to hide an unlawful purpose beneath the forms of a lawful enterprise have developed in this case, furnish the means of exposing and punishing that purpose.

TESTIMONY SHOWING THE GUILTY PURPOSE OF THE ENTERPRISE.

The bark Kate, which then purported to be owned by Benjamin Buck and Alfred Buck, of Baltimore., Md., and of

which Charles W. Buck was then master, arrived at New York from Havana on or about the 17th of May, 1860, with a cargo of rum, wine, copper, &c., consigned to Antonio Ross, of New York, and of sugar, consigned to Robert and Williams of the same place, of which Ross, on the 30th of June, 1860, acknowledges the delivery of his portion. The principal consignment to Ross was 150 pipes of rum. (Rec., pp. 44, 46.)

On the 23d of May, 1860, six days after her arrival at New York, Benjamin and Alfred Buck, by Charles W. Buck, as their attorney, purported to sell the vessel to "Charles P. Lake, of Brooklyn, State of New York," for $10,500; (bill of sale, Rec., pp. 129, 130.) The appraisers appointed by the district court valued her, under oath, in August, and again in October, 1860, at $4,000. (Rec., pp. 6, 86.)

She was a bark of about 267 tons, with one deck and three masts, 114 feet 6 inches long, 26 feet wide, 10 feet 3 inches deep, having the usual characteristics of vessels fitted out for the slave trade. She was registered on oath of "Charles P. Lake, of Brooklyn, State of New York," on the 30th of May, 1860. The register bond was also executed on the 30th of May, 1860, by Lake, Frederick Otto, and H. C. Smith, and describes Otto as then master of the vessel. (Rec., pp. 66, 67.)

Smith was the custom-house broker who cleared the vessel. He states that Otto introduced him to Lake, and he cleared her for Lake, both Lake and Otto being present, and both giving him money for the purpose. (Rec., p. 19.)

She was cleared on the 3d of July, 1860, "bound for Cape Palmas and ports west coast of Africa," (Rec., p. 70,) and put to sea on that day.

On the 17th or 18th of May, 1860, soon after her arrival, and five or six days before her alleged purchase by Lake, Smith first spoke to the clearance clerk in the custom-house in reference to the clearance of the Kate. On that day Smith had just cleared the schooner Josephine for the coast of Africa, (seized as a slaver on the 20th of May, two or three days afterwards.) Smith asked the clerk (DeGraw) why he persisted in reporting these vessels going to the coast of Africa to the government officers, and asked him if he had ever made by the operation. DeGraw answering that he had not, Smith

said he could if he wished. DeGraw having consulted the head of the naval office on the subject shortly after the clearance of the Josephine, Smith returned and laid a $20 gold-piece on his desk, saying that he would soon clear the bark Kate, but was not doing so at that time, and that it would be the same in future cases if he wished, which he repeated several times subsequently between that and the time when the Kate was cleared. (DeGraw, Rec., pp. 22, 23.)

Smith, being afterwards examined by the claimant, denied that he had anything to do with the Kate until the bill of sale was lodged, but admitted that he gave DeGraw $20 on the day the Josephine was cleared, and said he had *lent* DeGraw money for facilities he gave at his desk, and that the money so borrowed was *not* to be returned. (Rec., p. 37.)

The outward manifest of the cargo of the Kate, presented at the custom-house on the 3d of July, 1860, declares that it is to be landed at Cape Palmas and leeward ports west coast of Africa, but names no consignee. It embraces goods, &c., valued at $7,361. (Rec., p. 43)

The shipper's manifest, purporting to be of part of cargo shipped by José Hernandez on board the bark Kate, &c., for same destination, and without designating either consignee or place where it is to be landed, embraces all of the goods, &c., reported in the manifest first named, and some not reported in it. It is valued at $7,536. (Rec., p. 121.)

These articles are such as are usually shipped on vessels fitted out for slavers, and well known to be suitable for the traffic in slaves, including 100 pipes of rum, (probably part of the rum which made part of the cargo from Havana consigned to Antonio Ross,) large quantities of other liquors, beef, pork, rice, (110 half barrels;) bread, (80 barrels;) lumber, (5,000 feet;) water-casks, (82;) hoop-iron, vinegar, iron pots, pails, drugs and medicines, and other usual and characteristic articles of outfit for the trade.

It may be here stated that when Smith again applied for a clearance for the vessel on the 14th or 15th of September, 1860, after she had been reloaded and was preparing to start a second time on her projected voyage, a manifest was presented

identical in all respects with the one last mentioned, except that the drugs and one keg of sausages were marked for Otto. (Rec., 101.)

When, after her second seizure, the cargo was broken out by the inspectors of customs, on the 17th of September, she was discovered to have on board a large quantity of articles needed in the slave trade, which were not reported to the custom-house. Among these were bread, beef and pork, coils of rope, duck, water-casks, zinc, lime, sand, tar, flour, rice, potatoes, five globe lanterns, one dozen pewter pitchers, and one dozen tin cups in cabin, evidently hidden, a surf boat, a stove, and a great variety of articles of food. The boxes manifested as containing "iron pots" were found to contain furnaces with boilers on top, which could be used for cooking a quarter of a barrel of rice each. They were termed "boxes of hardware." The water-casks were filled with fresh water. (Rec., p. 119; Woods, Forrest, pp. 26, 27.)

Her equipment and manner of lading were equally significant. She was a sharp-built vessel, and, Captain Faunce says, looked like a fast sailer, with plenty of canvas and spars, 16 or 18 spare spars and sails, a much greater supply than was necessary, a spare topmast and yard being all that are needed. (Faunce, Rec., pp. 14, 30.)

The lumber was piled closely on top of the water-casks, and formed a flooring throughout the whole length of the vessel, and the cargo was over that, the casks laid lengthwise, the sleepers crosswise, and the planking fore and aft. There was an iron tank for water in the hold, six feet square. (Rec., pp. 26, 27.)

All the testimony on that subject shows that the bark, her equipments and lading were carefully prepared in accordance with the present requirements of the slave trade, which, discarding the manacles and other exclusive insignia, whereby guilt might be easily proved, furnish the vessel with an outfit, having the appearance of lawful trade, and which yet may, on arrival at the slave port, be easily converted to the purposes of the slave trade, and the vessel (as Judge Betts says) "in one hour's time become transmuted from the fitment and

aspect of an honest trader to a slaver under way, laden with hundreds of human beings in transportation to foreign markets as merchandise." (Carnot's Narrative of Slave Trade; Lt. Foster's Notes on Africa, Ex. Doc. 2d Sess. 28th Cong., No. 148; U. S. *vs.* The Butterfly; U. S. *vs.* bark Laurens.) See Judge Betts's opinion in this case. She was evidently supplied and laden so as to avoid the necessity of seeking any regular port or harbor, either to repair damages in case of accident, or to exchange cargo, and also so as to support a large number of human beings without laying in any further supplies.

The shipping articles of 3d July, 1860, which declared the vessel "bound for Cape Palmas and a market, and back to a final port of discharge in the United States," show the unusually large crew (for an ordinary trading vessel) of thirteen men besides the captain. (Rec., p. 48.) The crew list appended to it is false in several particulars. All are represented as having been born in the United States. Otto W. Raven, the first mate, who is put down as O. J. N. Raven, born in New York, is a German, and swears that he commenced for sea in Bremen, seventeen years ago, about which time he came to New York, and was afterwards naturalized. He had been four or five times to coast of Africa; last time in the bark Cora, which is known to have been seized as a slaver. (Rec., p. 31.) The second mate is entered by the commonplace American name of Francis Stevens, born in Louisiana, whereas he swears that he is Portuguese, and his name is Stevo. (Rec., p. 37.) How many of the rest are native Americans we cannot tell, but we may guess that Joseph Manuel and Francis Antonio, though credited to New York and Massachusetts, were born where the slave trade is less odious than in those States.

The shipping articles for the projected voyage in September are in like form, with the same number of crew list, retaining the two mates and most of the men on the first, and repeating the same falsehoods. (Rec., pp. 102, 105.)

On the 3d of July, 1860, the Kate started on her voyage, in tow of the steamer Yankee. She had passed Romer shoals, when Captain Faunce, of the revenue cutter Harriet Lane,

noticed the small tug Magnolia approaching her. He boarded and brought back the Magnolia, and sent a customs officer to take charge of the Kate. When the Magnolia came to the battery, where the Harriet Lane had anchored, the officer brought on board the Harriet Lane four or five passengers, one of whom he recognized as a man named Da Costa, a Portuguese, whom he had seized in 1856, with others, on board the slaver Braman. (Rec., pp. 13, 15, 29.) This man, whose real name was Henrico Da Costa, had been indicted in July, 1856, as owner and builder of the brigantine Braman, for causing her to be sent into the slave trade. (Rec., pp. 86, 100.) He forfeited his recognizance in 1856, and having been afterwards surrendered by his surety, (Rec., p. 122,) managed to escape from the officer. (Rec., p. 22.) The Magnolia had been hired by Otto to take him and Da Costa down the bay and put them on board the Kate, after she had gone some distance from port. (Rec., pp. 16, 17.) After Otto had been put on board the Kate, she was seized by Thomas Brown, the officer of customs sent by Captain Faunce. Brown states that when Da Costa was brought on to the Kate, Otto denied that he had ever seen that man before. (Rec., pp. 19, 20.) On the Magnolia, Otto and Da Costa had evidently pretended not to know each other, (pp. 16, 19.) But in the Kate's cabin were found three or four trunks with Da Costa's name on them, with light clothing in them, evidently for a warm climate, (pp. 13, 20, 21.) On the next day, Da Costa having come on board the Kate, Otto inquired who he was, and if he was in the custom-house department; said he did not know him, and they did not appear to recognize each other. But at the same time they communicated with each other clandestinely, through the mate, Raven, who also affected not to know Da Costa. (Rec., p. 20.) On the same day, (4th July,) McCormick, agent for the Magnolia, who had carried Otto to the Kate, prayed Judge Russell for a writ of habeas corpus for the release of Da Costa, under the name of *John Garcia*, then detained by Captain Faunce, which writ was issued. (Rec., pp. 38, 39.) But on the 5th of July a war-

rant issued out of the United States district court for his arrest as Henrico Da Costa, on the pending indictment in the Braman case, and having been held on that charge, he was discharged on recognizance on the 18th of September, since when he has not been heard from. When taken from the Magnolia he pretended to be Garcia, and not Da Costa, (Rec., p. 29,) and McCormick says he thinks Otto called him Garcia. (Rec., p. 18.) He also pretended to be ignorant of our language, but is proved to have understood it. (Rec., pp. 24, 26.) He has not been produced by the claimant to explain these facts, nor are they explained from any other source. It is probable that he had still another *alias*, viz: José Hernandez. That is the name of the shipper of the Kate's cargo on the 3d of July, who swore to the shipper's manifest on that day. Da Costa was then in New York. But when the manifest of cargo was again presented to the custom-house for a clearance, on the 14th or 15th of September, the name of José Hernandez did not appear on it as shipper, and we have no information that any shipper appeared to make oath at that time. Da Costa was then in custody of the marshal, on the charge for which he stood indicted. This fact, doubtless, accounts for the failure of Hernandez to verify his manifest of cargo.

It is further noticeable that Hernandez, although purporting to be owner of the cargo, never appeared either as claimant or witness, and no account whatever is given of him.

The alleged owner and claimant, Lake, in his affidavit of 16th October, 1860. (Rec., p. 10,) swears "that he chartered the vessel for a voyage to the coast of Africa, trading, and return to New York; that the vessel *was loaded with the goods of the charterer*, and ready for sea on the 2d of July." The charterer was, therefore, Hernandez, or the person assuming that name. And yet he neither appears, as claimant or otherwise, to answer the libel filed 6th July, nor that of 1st October. He was certainly in New York on the 3d of July. Why, then, does he fail to make claim or sign, and why does Lake, claiming as carrier of the cargo, fail to name him as its owner? Either Hernandez had no existence, or he was afraid to appear. If Hernandez was Da Costa, the mys-

tery is solved on both hypotheses. But even if he was not Da Costa, his strange absence and silence create a presumption against the purpose for which his cargo was designed, which the claimant has not chosen to remove by the explanatory evidence, which even the exception of the United States district attorney to his right to claim as bailee and carrier of cargo (Rec., p. 81) could not extort from him.

But the position and conduct of Lake, the claimant, are also inconsistent with a lawful purpose. The bill of sale (Rec., p. 129) and his custom-house affidavit of 30th May, 1860, (Rec., p. 66,) represent him as then residing in Brooklyn. The only person who testified to his existence was Smith, the broker, who cleared the Kate, and although he pretended to have "seen him about for years," he never knew his name until the day she was cleared, and did not even then know if he was in business. (Rec., p. 19.) Whether Smith's statement of the existence of a man named Lake is true may be doubted, for he says that he first knew his name on the day of clearance, (the 3d of July,) and that he was not employed to clear her until that time, (Rec., pp. 19, 37;) whereas DeGraw has proved that Smith's first act in reference to clearance of the Kate was on 17th or 18th of May. (Rec., p. 22.) But even if his statement be true, it is very probable that the person introduced to him on that day by Otto falsely assumed the name of Lake, because, in that name the vessel was purchased and the enterprise carried on, for no other person in the case proves his existence. He certainly was not in the African trade in New York, and had never cleared a vessel before. (Rec., p. 27.) Neither Raven, the mate, (Rec., p. 32,) Smalley, the stevedore, (Rec., p. 36,) Machado, who had been in the African trade since 1836, and who is the standing witness of the claimants in these cases, (Rec., p. 35,) nor Bush, who was the friend of Otto, and accompanied him on the Magnolia, and the landlord of Raven, (Rec., p. 36,) knew anything about him. These persons were the claimant's witnesses, and he is the claimant. They knew Otto, and some of them knew Da Costa, but all were ignorant of the person for whom they were examined. It is quite impossible

to believe that all these witnesses, so evidently familiar with the persons interested in, and the facts surrounding this vessel and her projected voyage, could have been entirely ignorant of so prominent an actor as Lake, if a man of that name had actually owned the vessel, and supervised her clearance on an honest voyage. Raven, for example, who denies all knowledge of Lake, Hernandez, or Da Costa, says he went on board the Kate as mate on 24th of May, with Otto as master. The bill of sale shows that she was only purchased the day before by Lake!

The petition for the appeal of this case to the circuit court is in his name, but is signed by his counsel, and the bond given on appeal is not executed by him, but by two other persons. (Rec., pp. 131, 132.) The petition for appeal to the Supreme Court is in his name, but is signed by his counsel; and the bond is nominally given by C. P. Lake and Geo. D. Vogel, but Vogel signs both Lake's name and his own. Judge Betts says: "It was also shown on the trial by the plaintiff that Lake could not be found, to serve with a subpœna to appear as a witness at this trial, and his counsel being appealed to to produce him in court, or state his residence, or where he may now be found, made no disclosure or direct response to that demand. He had asserted in an affidavit that he had chartered the vessel for the voyage, but on the trial did not produce the charter-party, or prove to whom or for what voyage it was given, nor how he was carrier of the cargo." (See opinion in this case.)

Whether Lake, the claimant and owner of the vessel, Hernandez, the shipper and owner of the cargo, Da Costa, the passenger, and Garcia, the prisoner, are one and the same person, reappearing in each character with Protean facility, as emergency required, and finally disappearing when the law sought to convict and punish the indicted slave dealer, is a question which we cannot answer, but which the claimant in this case, whoever he may be, might easily have answered if he had chosen. But he has preferred to remain in safe obscurity, and to let these mysteries remain unsolved. It may be added, that the fact that in the early stages of these pro-

ceedings certain affidavits were made in the name of Lake, is no evidence of the real existence of a person so named; for, 1st. The officers before whom they were made, being personally unacquainted with the man who assumed that name, could be easily deceived; and, 2d. The records in the other slaver cases before this court show with what facility the slave dealers in New York can manufacture a man of straw, who can act as claimant, and all other necessary parts; *e. g.*, John Morris, in case of Weathergauge.

The master, Otto, whose identity is not questioned, and who could have proved the identity of these persons and explained the real purpose of the voyage, was not produced, and could not be found, having entered into recognizance on the 11th of July, 1860, to appear and answer a charge of having served on board the Kate, then employed in the slave trade, which recognizance was forfeited on the 29th of December, 1860. (Rec., pp. 127, 129.) His absence is explained by no other fact than this.

No letter of instructions from the owner or charterer to him, bill of lading, letters to consignees, or other papers which might have thrown light on the purposes of the voyage, are produced, nor is their absence accounted for.

No connexion is shown in the outfit of the vessel, purchase and lading of the cargo, or scheme of the voyage, with any known commercial house in New York or elsewhere. Who purchased the goods, from whom, or where purchased, to whom destined or consigned, are facts not disclosed. Nothing is proved to put the government on the track of inquiry as to the persons responsible for the enterprise and cognizant of its real design. Hence it exhibits an entire absence of all the usual connexions and methods by which commercial ventures are surrounded and authenticated.

But in this case it may be noticed that Smith, as custom-house broker, Smalley, as stevedore, and Machado, as witness, to vouch for the integrity of the voyage, all reappear as in the other slaver cases, performing their several parts. It is impossible to resist the conviction, in reading their testimony, that these men were part of the combination who so long and

flagrantly prosecuted the slave trade in New York, and who ought once more to be brought into the United States courts in slave trade cases, but not as witnesses.

All these circumstances, which no ingenuity can reconcile with an innocent purpose as they stand, the person who claims by the name of Lake, and he alone, of the parties to the suit, could have explained. More than all others, it is his interest to do so, if the enterprise were innocent. But with the means in his hands, he has withheld all explanation, and has preferred to let the case rest in a mystery of his own creation.

On the whole case, the following propositions are submitted :

I.

The evidence fully and satisfactorily proves that the Kate, when seized, both in July and September, 1860, was actually fitted out and laden in exact accordance with the requirements of the slave trade, and that she was prepared and intended to sail for a point or points on the western coast of Africa, where that trade is prosecuted. These facts suggest and sustain the reasonable suspicion that her destination and purpose were to engage in that trade. They therefore establish probable cause for her seizure.

II.

This reasonable suspicion is not repelled by the fact that the vessel was openly fitted out, once cleared, and again attempted to be cleared for a port or ports on the African coast, where it may be alleged that the slave trade is not prosecuted, with portions of her cargo equally fitted for the lawful or the slave trade, because, as already stated, that is one of the devices by which the slave traders are well known to attempt escape from the vigilance of the law. Judge Betts has judicially decided in this case, that "slaving vessels are now employed in the trade, fitted out and cleared at ports abroad, and in this country, openly, carrying substantially like cargoes and equipments as those which pursue a lawful trade upon the coast of Africa."

III.

But the testimony in this case discloses facts so entirely inconsistent with the innocence of this vessel and cargo in the projected enterprise, that the reasonable suspicion of guilty purpose founded on her admitted destination, equipment and lading, is strengthened into a clear and satisfactory conviction of that guilty purpose. Some of the most prominent of these may be thus recapitulated:

A.

The purchase of the vessel by a man who, although his name is used as claimant, cannot be found, and in all probability has no real existence, and the failure to produce any of the vendors as witnesses to verify the integrity of the purchase. This last was especially necessary, because the bill of sale states her price at $10,500, whereas the sworn appraisers in August, (less than three months after purchase,) and again in October, 1860, fix her value at only $4,000.

B.

The fact that Smith, the custom-house broker of the slave traders, spoke to the clearance clerk of clearing this vessel for this enterprise six days before her pretended purchase by Lake, and within a few hours of her arrival from Havana, and afterwards attempted to bribe that officer to clear her and not report her to the government officers.

C.

That the vessel contained large quantities of supplies usual in the slave trade, but not reported on the manifest, and unusual as ship stores on an ordinary trading vessel.

D.

That the number of the crew exceeded the requirements of the vessel as an ordinary trader, and they were falsely entered on the crew list; some of them being foreigners, who had evidently been engaged before in the slave trade.

E.

That the pretended shipper, Hernandez, had no real existence by that name or if he had, that having sworn to the manifest by that name; on the 3d of July, he disappeared after that date, and has not since been heard of; failing to claim his cargo, or to prove his title to it, by showing whence purchased, or any other fact relating to it. Although the pretended charterer of the vessel, he is not even named as having an interest in the claim filed, nor is he known by that name to any persons connected with the vessel. No charter-party is produced, nor any fact proved to show who he is, whence he comes, where he resides, what commercial connexions he has in New York or elsewhere, or to whom his cargo is consigned.

F.

The mysterious connexion of Da Costa, then a fugitive from justice, indicted for slave trading with the vessel and her voyage, and the evident complicity between him and the master of the vessel, whilst affecting ignorance of each other, together with the other suspicious facts attending the sailing of the vessel and her first seizure.

G.

The disappearance of the master, Otto, after his arrest on the charge of engaging in the slave trade, (in this enterprise,) and the failure to produce him as a witness, or to prove his former character and employment.

H.

The failure of the real parties, claiming under the name of Lake, to produce any ship's papers or other evidence not in the custom-house, showing the real purposes or destination of the voyage or cargo, or to give the government any clue to the sources whence such evidence might be obtained.

I.

The entire absence of all the usual commercial connexions

and surroundings of an honest voyage, by which its purposes and destination can easily and fully be ascertained and vindicated.

K.

The only agents of commerce known to be connected with the projected voyage are Smith, the custom-house broker, and Smalley, the stevedore, who are proved and known to have the same connexion with other, if not all, the vessels seized or condemned as slavers at New York.

L.

Around these leading facts are grouped many others more or less suspicious, all furnishing evidence of a guilty purpose in the absence of the explanations which the claimant could and ought to have given, if the projected enterprise were innocent.

IV.

These accumulated proofs of a guilty purpose in the arrested voyage completely overbear any presumption of innocence which might be claimed from the asserted lawful character of the enterprise, and *of themselves* subject the vessel, &c., and cargo, to forfeiture, unless the claimant can restore such presumption of innocence by explanatory evidence which will destroy the force of these proofs.

V.

But the failure of the claimant to furnish such explanatory evidence, that evidence being peculiarly within his possession, greatly strengthens the force of the inculpatory evidence, and raises it to the character of clear and satisfactory proof.

In the Emily and Caroline, (9 Wheat., 381,) this court said: "There was no attempt whatever by the claimant to explain the object of these peculiar fitments, or to show that the destination of the vessels was other than that of the slave trade. We may *therefore* safely conclude, that the purpose for which these vessels were fitting was the slave trade," &c.

See also 1 Stark. Ev., 34, 35; Taylor *vs.* Riggs, 1 Pet., 596; Wills on Circumstantial Ev., 86; 41 Law Lib., 40; Rex *vs.* Burdett, 4 B. and A., 140; The Joséfa Segunda, 5 Wheat., 338; U. S. *vs.* Catharine, 2 Paine, 747; 1 Greenl. Ev., 37, cited at length in brief of The Sarah.

These principles are especially applicable in cases where the question is one of *intention*, to be ascertained from acts and preparations, all of which were carefully moulded and directed so as to conceal that intention, and give the transaction the semblance of a different one. The party alleging a guilty intention is necessarily compelled to extract evidence of it from acts and preparations expressly designed to conceal it, and to rely on such facts of suspicious aspect as accident, carelessness, or the natural incongruity between truth and falsehood, may develop. Where the guilty purpose is hidden under the guise of a lawful enterprise with such skill and adroitness as the slave traders are well known to have exhibited, those suspicious facts are apt to be few and insignificant. When they *are* discovered and proved, their ordinary force ought to be greatly strengthened by the failure of a party on whom they are fastened to make full and frank explanation of them. And the force of such suspicions will increase in proportion as their explanation is easy to the party.

In this case many prominent facts, quite inconsistent with an innocent purpose, mark every stage of the venture. The government cannot explain them away, because the evidence of their real character is not within its reach, it having been in many instances withheld, destroyed, or removed by the claimant, and the whole transaction having been so much out of the usual channels of commercial operations as to elude fair inquiry.

The claimant, although he, and he only, holds the clues to these mysteries, will not disclose them, but chooses rather to rest under the shadow of the suspicions and presumptions they arouse, than to subject them to the light of full and free investigation.

We therefore insist, that even if these facts, inconsistent with an innocent purpose, were, in this case, far less numerous

and impressive than they are, the misconduct of the claimant would entitle them to the weight of satisfactory proof.

VI.

Judge Betts, in his able and elaborate opinion in this case, has laid down the rule, that in cases like the present, where forfeitures are sought to be enforced for infractions of penal laws, "the government is not restricted to proof of *positive facts* in laying a foundation for a presumption or inference that acts have been done in violation of law; but they may invoke circumstances calculated to raise suspicions that the purpose inducing the acts performed was illicit, which suspicions must avail as convicting evidence, unless countervailed or explained by proofs in the power of the claimant to furnish."

Although we do not claim, in this case, that the evidence of a purpose to engage in the slave trade, disclosed in the acts and preparations of the parties to the enterprise in question, amounts to what is called in law *direct and positive evidence*—that is, evidence so conclusive in itself that it cannot be explained or destroyed—we yet do claim that it is circumstantial evidence sufficient *in itself* to raise a strong presumption of that guilty purpose, and to justify conviction, if it be not explained or countervailed by rebutting evidence from the party affected by it. In other words, that the circumstances surrounding the whole transaction are so inconsistent with the theory of an innocent purpose, that the theory of the guilty purpose charged must be accepted as the most satisfactory solution, unless the party affected by them show, by explanatory evidence, that those circumstances are consistent with innocence. The effect of such circumstances, then, is to produce not merely *suspicions* of guilt, but a strong presumption of guilt, which can only be removed or shaken by such explanatory evidence. And where the party affected fails to produce that explanatory evidence, it being within his possession or easy reach, that presumption is raised into *a clear and satisfactory conviction* of guilt having the effect of full proof.

We do not, therefore, deem it necessary to the affirmance of the decree in this case that this court should also affirm the rule laid down by Judge Betts above cited. It is believed

that the court will regard the evidence in the case as, in itself, reaching the standard of proof we have suggested.

But if it should, in the opinion of the court, amount to no more than enough to raise suspicions of the guilty purpose charged, we submit that Judge Betts has demonstrated, in his opinion herewith printed, that the utter failure of the claimant to remove the grounds of those suspicions by explanatory evidence within his possession or reach gives them the effect of convicting proof. (See Judge Betts's opinion and authorities cited.)

VII.

The claimant's objection to the proceedings in this case on the ground that proceedings for forfeiture of the Kate are pending under the libel filed 6th July, 1860, if that objection be here urged, is fully answered in the opinion of Judge Betts, especially in this—that conceding the claim to be regular and to have the whole force of the general issue in correct pleading, the claimant cannot avail himself of the fact of a *lis pendens* between the same parties on the same cause of action, without pleading specially the matter of defence in abatement or bar. (See authorities cited by Judge Betts.)

In answer to a similar objection, (2 Sumner, 589,) Judge Story said: "The objection that another suit is pending between the same parties for the same subject-matter is preliminary in its character, and should have been taken, if at all, by special plea in abatement, known in ecclesiastical and admiralty courts as a dilatory or declinatory exception, always brought forward before the *contestatio litis* or general defence in bar, or general answer upon the merits."

To which may be added, that the cause of action is not the same, new facts and grounds of forfeiture having occurred since the libel of 6th July, 1860, was filed.

On the whole case, the action of the district and circuit courts should be affirmed.

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Special Counsel for U. S.

U. S. DISTRICT COURT—THE UNITED STATES vs. THE BARK KATE—CHARLES P. LAKE, CLAIMANT—OPINION OF JUDGE BETTS.

BETTS, J.—A longer time has been occupied on the final hearing of this case than its intrinsic difficulties or importance would justly demand. But it is treated by the government as a representative case, the vessel being supposed to be prepared to simulate a lawful trader in pursuit of an honest voyage, whilst being in reality fitted and intended to be employed in the slave trade, and be associated with that large fleet of marauders who have for years prosecuted the nefarious business in defiance of law and to the discredit of the nation. The claimant, on his side, regards the proceedings of the government in the arrest of the vessel and the institution of this action a highhanded attempt to destroy a legitimate business, and subject him to serious pecuniary losses. The vessel was found in this port ready to take a clearance and proceed to sea, when she was seized by the collector on the 1st of October last, and was the same day libelled under the acts of Congress of March 22, 1794, and April 20, 1818, as having been fitted and prepared for the purpose of carrying on the slave trade in violation of the provisions of those statutes.

Charles P. Lake appeared in court on the 17th of October to the process of attachment issued under the libel, and claimed to be owner of the vessel and carrier of the cargo; and having obtained from the court further time to answer the libel, filed his answer on the 8th of November thereafter, taking a general issue to all its allegations. These are all the pleadings on his part. No owner of the cargo appears as such to claim or defend it in the action. On the trial of the cause the plaintiff offered testimony in support of the libel of acts of the owner and the vessel prior to the 6th of July, 1860, at which time she had been seized and libelled in behalf of the United States on the identical charges contained in the present libel. The present claimant, on the 10th of July last, appeared in said cause and filed his claim therein to the said vessel, her tackle, &c., as owner, and to her cargo "*as owner, as common carrier thereof.*" The plaintiff filed exceptions on the 12th of July

to the averments in the claim of ownership of the vessel or cargo by the claimant, Lake, and the cause has remained in court not further proceeded upon by either party on either of those issues in that suit, and no other issue to the libel was made by the claimant.

The exception to the claim was authorized by rule 96 of this court, and being acquiesced in by the claimant for more than four days after they were interposed, the plaintiff would have a right to an order disallowing the claim as filed. If, then, a claim may not be regarded equivalent to an answer, the libel would stand unreplied to, and, in that state, could afford no bar to a new action for the same cause. But if, in correct pleading, the claim takes a general issue to the libel and effects a *lis pendens* between the same parties on the same cause of action, the defendant cannot avail himself of that objection under the general issue in this after action without pleading specially the matter of defence in abatement or bar. (1 Chitty Pl., 443; Gould Pl., ch. 6, 122; Percival *vs.* Hickey, 18 Johns' R., 257; Haight *vs.* Holly, 3 Wend., 358.) The abolition of special pleading by the State (Code, 122, sec. 140) does not affect proceedings in the federal courts. Their practice is governed by their own stated rules or by the common law, (21 Howard R., rule 3.) The evidence, therefore, offered by the United States under this issue, in the present suit, is legally admissible, the same as if no former action had been instituted.

The main stress of discussion between the respective counsel related to the character and effect of indirect or circumstancial evidence offered by the United States in support of the action. The libellants claimed that the proofs raised a *reasonable suspicion* that the voyage intended by the vessel was an illicit one and in violation of the acts of Congress referred to, and were sufficient to compel the condemnation of the vessel and cargo, unless such *suspicions* were overborne and repelled by clear exculpatory evidence on the part of the claimant, and also that the claimant had no competent authority to defend the cargo, and that it must be condemned though the vessel should be acquitted.

The second point as to the capacity of a carrier to appear and defend with the right of *quasi* owner is merely formal, and should have been raised by exceptions or motion to exclude his claim. After notice of trial to him by the libellants and bringing the cause to hearing upon such claim as being a proper answer, the court will not give any effect to suggestions at hearing upon merits, that the defence by claim alone is informal or inadequate to resist the action. But it has been repeatedly held in this court that a common carrier is authorized to appear in admiralty suits for, and defend property intrusted to him in that capacity against possessory actions seeking to take it from him; or to maintain actions himself in that right to reclaim property of which he has been wrongly deprived by others. (Hovey *vs.* Steamer Sarah E. Brown, 24 Decisions, 39 MSS.; Collis *et al. vs.* Schooner Coernine, *ibid.*, 41.)

The position taken by the claimant on the merits is, that the libellants furnish no further proof implicating the vessel and cargo in the offence charged in the libel than what is to be legally inferred from her outfit and destination; that although those facts are competent testimony, yet the proof being entirely circumstantial and inferential, the settled rule of law is, that its bearing and import must be inconsistent with an honest voyage and innocent purpose in order to authorize a condemnation of the vessel or cargo. If the testimony is alike consistent with a lawful intent in the employment of the vessel and her lading, then, it is insisted, the conclusion from it must be in favor of the innocency of the adventure, and not against it. That is, that the same principle of construction applies to circumstantial and indirect evidence alike, whether it is used to convict a person of a crime, or a violation of positive law which works a penalty or forfeiture of property only. This is deemed by the defence on the present issue a fundamental doctrine in this class of prosecutions. The point of law being put forward so prominently in the case, it is proper to consider the question preliminarily to an examination of the facts in evidence to criminate the voyage.

Evidence was offered by the libellants on the hearing with a view to two ends: first, to satisfy the court there was *pro-*

bable cause existing for her arrest when the vessel was seized, entitling the collector to a certificate for his protection for the seizure; and second, to show grounds of *suspicion* in relation to acts of the vessel and the persons connected with her, which would cast on the claimant the *onus* of proving the innocency of her employment.

The claimant insists that *suspicions* or *grounds of suspicion* touching the lawfulness of the voyage contemplated by the vessel can no way affect her unless founded on facts which are inconsistent with the integrity of the voyage to be entered upon, and sufficient, affirmatively, and of themselves, to authorize her condemnation for the offence alleged against her. The rule of evidence applicable to criminal charges is invoked in support of this position, and in confirmation of that rule a decision rendered by the late Judge Ingersoll in a cause tried in the district of Connecticut upon a libel of information against a vessel seized and prosecuted in that district for violation of the acts of Congress of March 22, 1794, and April 20, 1818, under circumstances very analogous to this cause, is claimed to be a direct and authoritative decision on the very point.

The court discussed the question of law and fact presented in the case very minutely, and adopted with strong emphasis, as a rule governing the action, the principle that, in investigations into infractions of criminal or penal laws, the government are to supply evidence against the accused which leaves no reasonable doubt on the mind of his guilt. That there can be no presumption raised against him primarily; on the contrary, every presumption of innocence is to be extended to him, with full effect, until rebutted by clear and satisfactory proof on the part of the accusers; and the court considered the case of the U. S. *vs.* The ship Emily and brig Caroline, (9 Wheat., 381,) to have declared that doctrine in relation to prosecutions for violations of the slave acts. The decision of the district court is supported at great length with the reasoning of the judge upon the circumstances in evidence before him, and resulted in his pronouncing the peremptory character of that rule of evidence as applicable to and controlling the case on

hearing. That decision and opinion is strongly pertinent to this case and entitled to high respect in this court; and on the assumption that the rule of evidence was accurately stated by the court, I see no occasion for dissenting from or examining the conclusions drawn by him from the facts proved on that hearing. But, in my opinion, overdue weight was attributed to the supposed analogy between prohibited offences subject to indictment and punishable criminally, and those which carry with them only pecuniary penalties or a forfeiture of property, because of a *purpose* and *preparation* to perpetrate forbidden acts without any overt ones of criminality having been committed in execution of the purpose. That distinction is plainly marked in the reasoning of the Supreme Court in the case of the Emily and Caroline, relied upon as sustaining the decision of the district court. The language of the Supreme Court, cited in the district court, is evidently misapprehended, as declaring "that the government must prove the intention or purpose for which the vessel is fitted out so as to leave no reasonable doubt as to the object," because no question was raised on that point; and it was without any specification of the source of the evidence, or the particulars of which it was composed. And it was truly declared by the Supreme Court to have showed "conclusively and beyond the possibility of doubt that both vessels were fitting out for the slave trade." There was, accordingly, nothing before the Supreme Court calling for an exposition of the order or quality of proofs required to make out the forbidden purpose, or to denote that the government was under the necessity on its side to establish a cause of forfeiture clear of doubt, or else fail in its prosecution. The evidence also (to which the court adverted) came, in part, from the claimants, and no uncertainty was suggested as to its fulness and sufficiency to authorize the judgment given. The general doctrine of the case of the United States *vs.* The Emily and Caroline are reaffirmed by the court with a clearer illustration of its principles, (U. S. *vs.* The Plattsburg, 10 Wheat., 141, and 12 Wheat., 472, 473; U. S. *vs.* Gooding.) In the latter (page 473) the court declare "that any *preparations* for a slave voyage which clearly manifest or accompany

the illegal intent, even though (the preparations) be incomplete and imperfect, and *before the departure of the vessel from port*, constitute a fitting out within the purview of the statute." This is without any indication as to the source from which the testimony is derived, or intimation that this class of actions is exempt from the principle ordinarily applied in cases standing in doubt upon the proofs, or accompanied by circumstances calculated to excite suspicions, when the party pursued is in possession of evidence which might dispel all uncertainty, or is of a superior and more satisfactory character than that which he does offer, that then the presumption shall lie against him and not in his favor upon such ambiguity or defect of testimony. Starkie gives the theory of that rule in this language: "A party in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasions for strong presumptions against him, since it raises a *strong suspicion* that such evidence, if adduced, would operate to his prejudice." (1 Starkie Ev., 34, 35, sec. 16; 1 Chitty Cr. Law, 566; Taylor *vs.* Riggs, 1 Peters' R., 596; Roscoe Cr. Ev., 14.) And the force of circumstances is augmented whenever the party attempts no explanation of facts he may reasonably be presumed to be able to explain. (Wills on Circumstantial Evidence, 86; 25 Law Library, 46.)

So, also, the doctrine is clearly settled, that in prosecutions for penalties or forfeitures, because of infractions of penal laws, evidence less than what would amount *to probable cause*, and which would only be reasonable grounds of *suspicion* against the party or property proceeded against, is competent and pertinent proof upon which such forfeiture may be adjudged, if not satisfactorily contradicted or explained by countervailing proofs. (Murray *vs.* The Charming Betsey, 2 Cranch, 122; Maley *vs.* Shattuck, 3 Cranch, 488; Locke *vs.* The United States, 7 Cranch, 339; 5 Wheat., 338; The Joséfa Segunda; The Catharine, 2 Paine, C. C. R., 747; The U. S. *vs.* The bark Laurens, Scrap Book, p. 158, in this court.)

These doctrines, so authenticated, are ample, without further references, to evince that the rule, as applied by the district

court of Connecticut, transcends the requirements of law, and cannot be safely followed in disposing of the questions presented in this cause. There is a clear recognition in these decisions that, in actions of this class, the government is not restricted to proof of positive facts in laying a foundation for a presumption or inference that acts have been done in violation of law, but they may invoke circumstances calculated to raise suspicions that the purpose of mind or matter inducing the acts performed were illicit, which suspicions must avail as convicting evidence, unless countervailed or explained by proofs in the power of the claimant to furnish. Moreover, there is no department of jurisprudence more justly entitled to assimilate to itself the expansive properties of the common law than the law of evidence to be used as an instrument to detect and apply the actual truth of events to the ever varying aspects and exigencies of the business of life. Science, arts, experience, and the usages growing up with or employed in perfecting or managing trade, manufactures, productions, or the ramified operations of interchange of commodities, are from time to time unfolding strong and clear lights upon subjects once veiled in obscurity, and, in my opinion, the law can rightfully and, in the exercise of its high functions, should freely employ these instrumentalities in searching for and applying their teachings in all controversies in respect to rights or liabilities between man and man or governments and individuals. In the earlier seizures and prosecutions under the slave acts, vessels employed in the trade were found fitted out with arrangements so manifestly designed for that business, that the circumstantial proofs furnished by their preparations and equipment were nearly equivalent to positive testimony. The species of indirect or circumstantial proofs of that order, and then generally regarded as necessary to a conviction, were made public law by the treaty between England and Spain, so far as those high contracting parties were concerned, and were generally acquiesced in by courts of the United States as laying down a safe rule of evidence. (The Butterfly, district court, southern district, New York, December 6, 1840.) It soon grew almost into the course of the

courts to look for and demand that extreme force of circumstantial evidence to inflict the condemnation of a vessel upon presumptive proofs alone. Very soon slave traders discarded sets of manacles as part of their preparation, a slave deck was no longer found laid in the vessel or prepared for putting down; she exposed no longer an extraordinary supply of provisions, medicines or equipments specially adapted to the use of slaves, (or other conveniences, except perhaps than large supplies of water or water casks,) peculiar to the trade, on examination of the ship, or a mere inspection of her outfit to become very forcible evidence of her business and destination. For years past these insignia of slavers, except supplies of water, have disappeared from vessels detected in the trade and laden with slaves on actual transportation, and it has become notorious, from publications of writers thoroughly conversant with the course of the business, from proofs in courts of justice on the trial of vessels seized for violations of the laws, from public documents and the decisions in cases of the arrest of vessels for the offence, that slaving vessels are now employed in the trade, fitted and cleared at ports abroad and in this country openly, with the appearances of lawful traders, carrying substantially like cargoes and equipments as those which pursue a lawful trade upon the coast of Africa; and that on arrival out to the point where slave cargoes are collected, the ship is, impromptu, put in a state to receive their victims on board, and is thus enabled, often in one hour's time, to become transmuted from the fitment and aspect of an honest trader to a slaver under way, laden with hundreds of human beings on transportation to foreign markets as merchandise. (Canot's Narrative of the Slave Trade; Lt. Foster's Notes on Africa, Exec. Doc., 2d sess. 28th Cong., No. 148; The United States *vs.* The Butterfly, U. S. dist. court, MSS. 1840; The U. States *vs.* The bark Laurens; also in this court Scrap Book, 158, July, 1849.) This new practice of discarding from the preparation of slaving vessels most of the insignia of their real design, and, on the contrary, giving them the semblance of lawful traders, yet possessing the faculty of using at once, in their condition, the means necessary to accomplish their nefarious calling, appeals impressively to justice to put in

active service all the capabilities of the law of evidence in order to detect and thwart the imposition and crimes attempted to be carried out.

Accordingly, in support and accordance with the doctrine that when the evidence on the part of the government creates *strong suspicions* or *well-grounded suspicions* that the vessel seized as being employed in the slave trade was fitted out or fitting out for that purpose, the decisions in this court have been uniform and distinct that such evidence must produce her conviction and condemnation, unless rebutted by clear and satisfactory proofs on the part of the claimants showing her voyage to be a lawful one. This doctrine was largely commented on in the case of The United States *vs.* The bark Laurens, in 1849, before cited, and authorities and reasons in support of it were adduced, (Scrap Book, 158.) The court, in its decision, declared that the government having shown a *strong suspicion* that the vessel to be despatched on a slaving voyage, and that the claimants were knowingly concerned in said voyage, and they having produced no proof to the contrary, the vessel and cargo must be condemned as forfeited. Nine years after, the circuit court enforced the same principle in the cases of the Butterfly and Catharine, (2 Paine's R., 747.) The same rule of evidence was applied by Judge Hall, sitting in this court, in the case of The United States *vs.* The bark Orion, (Scrap Book, 604,) and the vessel was condemned to forfeiture on *suspicions* of culpability, not obviated by exculpatory proofs on the part of the claimant. The doctrine adopted by Judge Ingersoll, in the Connecticut district, has only been admitted here in cases where the reliable proofs on the part of the prosecution were wholly circumstantial and indirect, and amounted to no more than that the outfit and preparation of the vessel seized was of a nature to qualify her for an honest voyage, or to be readily perverted to an illicit one. Then the principle prevailed in favor of the party accused, that if no preponderance of proofs existed in the cause either way the presumption of innocence should inure to the acquittal of vessel and cargo. (The U. States *vs.* The brig Susan, 20 vol. dist. court, MSS. Decisions 28, (1852.) The

U. States *vs.* The bark Panchita, 22 *ibid.*, 461; The U. S. *vs.* The brig Ellen, *ibid.*, vol. 23, p. 48½; *ib.*, U. S. *vs.* The bark Chancellor, vol. 23, p. 145.) Notwithstanding such acquittals, it was quite usual that, in view of the facts before the seizing officer at the time of arrest, the court would order certificates of reasonable or probable cause of seizure in protection of the official acts done *ex parte* on such evidence. This exposition of the law of evidence applicable to the cause on prosecution leads to the consideration of the proofs as presented to the court.

It is not controverted, on the part of the claimant, that the vessel is of the class and general equipment of those which are notoriously employed in the slave trade, nor that the cargo on board her is essentially composed of articles sent to the coast of Africa with slave vessels, and furnishes a means of purchasing slaves on the coast. But it is insisted, upon the evidence and facts undisputed in regard to the trade and commerce of the country, that vessels and cargoes every way similar to the one seized in this case are constantly employed in carrying on a lawful trade to a large value by merchants in this country with Africa. That every article in the vessel or on the manifest was adapted in that market to a legitimate trade in the natural products of that country—palm oil, hides, gold dust, ivory—and large quantities of which are there obtained constantly for importation into this country and others in the ordinary modes of purchase and exchange. The claimant also gives forcible proofs conducing to show that the manifest of the vessel found with her, or offered for her clearance, comports in all important particulars with those sent out without objection at our custom-houses by traders and houses here of unquestioned character and integrity, and are of themselves staple articles of use and consumption by the inhabitants of that country. It is claimed that these proofs place the present expedition on equal footing with the most unexceptionable commercial adventurers to that region, and that in presumption of law the voyage must be held a lawful one on that state of facts, unless the government has produced on its part other and overpowering proofs showing irrefragably the voyage was of a contrary character and purpose. The re-

marks already made indicate the judgment of the court, tha accepting the proposition of the claimant that the direct circumstances in the case, (that is,) if the implication and inference legally arising from the preparation and destination alone of the vessel are in equipoise, and in that condition would not authorize the conviction and forfeiture of vessel or cargo, still, that the conclusion drawn from such facts by the claimant is not justified by law, and that it is not necessary for the government to produce any extraordinary force of proofs to change such balance in the evidence. Any class of facts or circumstances, or a single one affording reasons for a strong presumption that the voyage was put on foot for the purpose of taking and carrying slaves against the provisions of the statutes referred to, will effectually change the supposed equilibrium in the evidence, and cast upon the claimant the burden of proving that the preparation and acts done towards the voyage were honest aud lawful in their intent and character.

The circumstances offered in proof by the government to this end are therefore to be examined and passed upon. Outside of intrinsic proofs derived from the items of lading, the interior arrangements and destination of the vessel, her officers and crew, and the marked facility with which she might drop her honest mercantile semblance, and be clothed with every necessary means of taking on board and transporting a cargo of slaves, there are several particulars in proof conducing to denote a concealed and culpable purpose in arranging and setting forward the enterprise, and, in my opinion, sufficiently suspicious, connected with the fitments and destination of the vessel, to demand clearer and fuller proofs from the claimant than have been given respecting the purpose of the voyage. The statutes upon which the libel of information is founded make the *purpose* and *intent* with which the vessel is fitted out the gravamen of the misfeasance interdicted. The acts done are not specifically offences of themselves, but are so under the statutes, and become criminating to the accused only in so far as they manifest and establish that the prohibited *purpose* actuated him in setting on foot the adventure. (12 Wheat.,

460; 14 Peters, 475; the United States *vs.* Morris, 2 Paine C. C. R.; 2 Cowan and Hill's Notes to Phillips's Ev., 294, 298.)

I do not, however, consider it important to proceed to a labored discussion upon the details of the evidence offered to that point in order to evince the justness of the conclusions drawn from the whole in this decision. It will be sufficient to indicate the facts standing most prominently upon the proofs, and point out the inferences reasonably to be deduced from them in their relation to the preparation and employment of the bark for the voyage it was designed she should undertake, and whether such a state of the undertaking is thus presented as to cast the responsibility upon the claimant to furnish satisfactory evidence that the enterprise was an innocent and lawful one. Looking at the vessel on her arrival in this port in May last as being the *bona fide* property of owners resident in Baltimore, and seeking a market here, the inquiry is pertinent and material whether the ownership set up by the claimant was acquired in an open mercantile manner; or if it is clouded with circumstances calculated to raise a persuasion that the transaction was covert and unreal, with the purpose among the parties to it to falsify the true object of the supposed sale and mislead inquiries as to those under whose auspices it was conducted.

The bark arrived at this port, from Havana, May 17, 1860, with a cargo of spirits, sugar, &c., consigned from persons at that place to Antonio Ross, Robert & Williams, of New York. She was, within one week, sold to the present claimant for a consideration of $14,000 cash, and there is strong probable cause for believing that part of her lading brought from Cuba was transshipped to and composed a considerable portion of her cargo for the voyage in question, shipped in the name of José Hernandez, the two being strikingly correspondent in kind. The claimant omits to obtain from Ross and Williams, such consignees of the inward cargo, or Hernandez, the shipper of the present outward one, any proofs or certificate whether they are not the same merchandise, and continued in this voyage on a common account between themselves or with the master or his agents.

The claimant declared in his affidavit, read in court on an incidental motion in the cause, that he had chartered the vessel for the voyage to the shipper of the cargo. The shipper's manifest of cargo is sworn to by him personally before a deputy collector of this port on the 3d of July, 1860. The vessel and cargo were first seized on the 3d of July last, and a libel demanding their forfeiture was filed on the same day. On the 6th, Charles P. Lake alone intervened and claimed the vessel as sole owner, and also claimed the cargo as common carrier. The last part of the claim is interlined in apparently a hurried and careless manner in the printed form of the claim. His competency to intervene in the cause as owner or possessor of the vessel or cargo was excepted to by the plaintiff on the 12th of July, and the issue thus made stands undisposed of on the record. He has interposed no further answer to that action for either the vessel or her cargo. On the first of October thereafter the vessel and cargo were again seized and libelled in this action for the same cause. Charles P. Lake alone again intervened by the same form of claim as owner of the vessel and carrier of the cargo, and filed such claim October 17, and on the 17th of November, 1860, filed an answer to this libel in the same capacity. On the trial of the cause no testimony was given respecting the ownership or possession of the cargo further than that it was laden on the bark by stevedores at the charge of the vessel.

Inquiry was made on the trial of witnesses for an identification of Charles P. Lake, whether he was a merchant or even resident of the city of New York or Brooklyn, or a person known in either vicinity. No person testified to any knowledge of him except the broker who conducted for him the business of entering and clearing the vessel in his behalf at the custom-house, and he possessed no other knowledge of his residence than having met him in the streets of this city and seen him at the custom-house. It was also shown on the trial by the plaintiffs that Lake could not be found to serve with a subpœna to appear as a witness at this trial, and his counsel being appealed to to produce him in court or state his residence or where he may now be found, made no disclosure or direct

response to that demand. He had asserted in an affidavit that he had chartered the vessel for the voyage, but on the trial does not produce the charter-party or paper to whom or for what voyage it was given, nor how he was carrier of the cargo. The shipper of the cargo, though attesting to the manifest in this port, interposes no claim for it, nor does he give evidence in court respecting its present ownership or consignment. Without clear proof of the fact, it is not to be supposed the owner of the vessel chartered is to use her in his own name and right as carrier of her cargo.

Smith, who acted as Lake's broker in transactions at the custom-house in relation to this voyage and others to the coast of Africa for other parties, is proved by DeGraw, a clearance clerk in the custom-house, to have declared to him the same day the vessel was seized in this cause that he was about to clear another slaver for the coast of Africa, and that was said an hour or two before a clearance of the Kate on her last voyage was applied for and refused at the custom-house. The same witness also swears to declarations made by Smith to him in the custom-house in reference to slaving vessels and to his having obtained facilities in their clearance by means of gratuities to clerks in money. The testimony was objected to by the claimant as incompetent, because Smith could not by his declarations, apart from the claimant, affect the conduct or interests of the latter, and that Smith, moreover, on re-examination, explicitly contradicted the statement of DeGraw that he ever proffered money to the latter as an inducement to him to render any improper services in the custom-house. He admits he did from time to time let DeGraw and other custom-house clerks have sums of money, which he loaned them without expectation of a return of such moneys, as an acknowledgment for facilities accorded him there. Admitting that the testimony stands balanced as to the object and purpose of Smith in giving DeGraw $20 cash on the day of the first clearance of the Kate at the custom-house, and the promise to him of after donations for like services there, yet Smith was at the time acting as agent of the claimant, and, so far as his conduct was in furtherance of that agency, his declarations concomitant

upon the acts would be admissible evidence against the claimant, and his expectation of receiving facilities from officials acting in the custom-house, in consideration of (what he terms) gratuitous loans of money made by him to them, avowed on his examination in court, casts a shadow over the integrity of his dealings in these matters which will prevent the court allowing credit to his oath in preference to that of McGraw in relation to the facts and declarations between them in the custom-house.

Those facts and circumstances raise a strong suspicion that the claimant, Lake, was not a resident merchant in this place; or that he was, in fact, the manager of the voyage on foot on this occasion, and the law justly requires he should relieve himself from that suspicion, and prove that he was *bona fide* owner of the vessel, and had some correspondence or acquaintance on the coast of Africa, through which he was enabled to conduct, and was conducting, the business within the place of the voyage declared upon the ship's papers, and that the proceeding was not a color and subterfuge to promote an illicit enterprise in favor of some charterer or other persons whose connexion with it are concealed.

The master of the vessel and his first mate were foreigners, and there is evidence that other members of the crew were apparently such also. No proof is given of the character or former employment of the master—he has not been presented by the claimant as a witness, nor could he be found by the libellants and subpœnaed on their part for this trial. His instructions for the voyage have not been given in evidence by the claimant, and, indeed, no other important fact has been proved under the claim than that the cargo is one which corresponds in character with those employed in lawful trade on the coast. It must palpably be in the power of the claimant, if owner of the vessel, to supply full evidence in refutation of these suspicions, and to show the vessel was employed in an honest course of business, and I think his failure to do so leaves the case subject to strong presumption against the integrity of the voyage.

Another circumstance appeared upon the proofs in the

cause calculated further to fasten upon the proceedings of the vessel in entering upon the voyage marks of secrecy and deception in the composition of the ship's company, which demands a full and satisfactory explanation from the claimant.

The vessel was got under way to sea from her place of lading in her harbor, and her master procured a steam-tug here to put him on board of her on her way out. He then followed her down the bay, and was placed on board by the tug. An individual by the name of Henrico Da Costa went off on the tug from the city at the same time with the master of the vessel, to be placed on board also after she was outside of the narrows. The baggage of Da Costa was in the cabin of the vessel going out to sea with her. The master and Da Costa, after the vessel was seized, affected to be strangers to each other, and avoided all open communications together during their return to the city, but the master took charge of the baggage of Da Costa, on the return of the Kate under seizure, and had delivered it to him from the marshal's possession some days afterwards. But the evidence was strong that the two were acquainted, and acting under a mutual understanding, and leaves no reasonable doubt that they were in concert in the voyage. Da Costa, when arrested, denied his identity, and assumed a different name. It was clearly established in the course of the proceedings before the court on his arrest that he was really Da Costa, and also shown on this trial that he had been previously arrested and indicted in this court for being engaged in the slave trade on a vessel fitted out and sent from this port, which prosecution is still pending. Neither Da Costa nor the master were called by the claimant to testify in this cause and prove the innocency of their connexion with the vessel on this intended voyage, or that the employment of the vessel was a lawful one. It was the business of the claimant to explain and clear away those dubious circumstances by the testimony of those parties who, in presumption of law, were at his call either to be examined on depositions or openly in court. Failing to do this, the claimant is rightfully subject to the legal consequence resulting from his omission to lay such excusatory or explanatory testimony before

the court, which is to turn the presumption in support of the charge in the libel, instead of in favor of the innocency of the voyage, to one against its lawfulness.

Accordingly, those suspicions hanging over the enterprise, unexplained and unaccounted for by the claimant, with the evidence in his hands or at his command, the supposed equilibrium of proofs as to the nature and purpose of the voyage resting on the force and effects of the ordinary presumptions is reversed, and the claimant is under the necessity of supporting, by superior proofs on his side, the lawfulness and integrity of the preparation of the vessel and of her employment on the intended voyage, or the judgment of the court must be for the liabellants and against the defence.

From a careful consideration of the evidence and principles of law before me applicable to the case, I am of opinion that the libellants are entitled to the condemnation and sale of the vessel and cargo, and direct a decree to be entered to that end.

The following principles of law and matters in proof are recognized by the court as calling for and supporting this decision:

1. The acts of Congress of March 22, 1794, and April 20, 1818, inhibited the preparation and employment of the vessel and cargo in the manner and with the intent and purpose charged in the libel of information, under the penalty of forfeiture of both.

2. Admitting it to be true to a general intent, as contended for by the claimant, that the evidence derived from the preparation, destination, and lading of the vessel is of itself equally consistent with a lawful and innocent voyage to the coast of Africa, as for an illicit and prohibited one, the court is not bound to apply the same rule of presumption to such evidence as obtains on indictments for crimes and misdemeanors, and to declare there must be a clear preponderance in the proofs in favor of the United States to justify the conviction of the vessel and cargo.

3. Without taking into account the capacity of common law rules of evidence to expand and become adapted to the changeable events of business and life, and to have at one

period a force and significancy beyond what may have appertained to them at a different period, and so, as in this instance, under the proofs and notoriety of the illicit uses to which vessels fitted out as this one was on this occasion, to determine that the claimant was bound to show affirmatively that her employment was to be a legal and honest one. I hold it competent for the United States to give evidence that there were circumstances suspicious in their character attendant upon the preparation and despatch of this vessel on her proposed voyage, and that evidence of that description would rightfully lead to the condemnation of the vessel and cargo, unless repelled by preponderating evidence on the part of the claimant clearing the undertaking from such suspicions.

4. *Suspicions* of themselves are less than proof in support of issues of fact; nevertheless, in prosecuting for penalties or forfeitures imposed by statute, evidence raising strong suspicions against the party accused are admissible as circumstantial proof, and cast on him the burden of explaining or removing such suspicions, or have them weigh against him as evidence on the issue.

5. The claimant having failed to produce evidence that he is or has been engaged in trade or commerce; that he is *bona fide* owner in his own right of this vessel; that she was fitted out to perform the voyage under his directions or that of the charterer, as also who the real charterer is, and under what instructions the vessel was to sail and perform her voyage, and in what connexion with the vessel or the purposes of her voyage, Henrico De Costa was to go out in her to the coast of Africa, or elsewhere, and to furnish proof, by examination of the master or supercargo or other agent of the vessel, that her preparation and purpose for the voyage was lawful and honest. I think his omission to furnish evidence to these particulars and others of like character which, in presumption of law, it would lie in his power to produce, leaves his claim unsupported in this cause, and entitled the libellants to a decree of condemnation of the vessel and cargo.

6. As to the objection in point of form (by the claimant) to a recovery in the present suit, because of a prior one for the

same cause of action yet remaining undetermined, the principle is, that a defendant cannot, under the general issue, give evidence in bar of an action on trial, that a prior one is pending for the same cause, but must plead the defence specially.